No. (1)

Supreme Court, U.S.
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In The

Supreme Court of The United States

October Term, 1999

GERARD A. CORSINI,

Petitioner,

- against -

U-HAUL INTERNATIONAL, INC., *et al.*,

Respondents.

Petition for a Writ of Certiorari to the Appellate Division, of the Supreme Court, First Judicial Department

PETITION FOR A WRIT OF CERTIORARI

GERARD A. CORSINI
Petitioner Pro-se
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October 4, 1999

Appeal Press - (914) 761-3600 (212) 267-6602 (516) 872-1110 (6977)

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QUESTIONS PRESENTED

1. Did the dismissals of two separate substantial personal injury actions commenced by petitioner, an attorney, as a *pro se* plaintiff, solely on grounds of a "lack of professionalism and civility" toward respondents' counsel based in material part upon his mere attendance at an unrelated public trial and his objections at his deposition to misconduct of respondents' counsel established in the record as a matter of law, without any prejudice to respondents' ability to defend or any permissible presumption about the established merits of his actions violate petitioner's Fourteenth Amendment due process right to a hearing on the merits of his claims and his First Amendment rights to freely assemble in places open to the public and to freedom of expression?

2. Was petitioner denied his Fourteenth Amendment due process right to fair and impartial appellate tribunals and equal protection of the laws as a result of the extremely angry, personal, emotional and hostile outburst of one of the five judges sitting on the first appeal that resulted in the dismissal of both of his actions (and the participation or involvement in subsequent proceedings of judges who had deliberated with him) that he was particularly interested in opposing counsel's accusation that petitioner had mimicked counsel's Jewish accent because he too had an accent and that he did not care that the evidence before the court established as a matter of law that respondents' counsel had fabricated that accusation?

PARTIES TO THE PROCEEDINGS

In addition to the parties named in the caption, U-Haul Co. of New York, Inc., AMERCO and Shelly Jackson were parties before the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, with respect to one or more of three appeals in this case which resulted in the dismissal of two separate personal injury actions as to all of the respondents, the orders and/or judgments entered in connection with which are the subject of this petition.

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Petitioner, Gerard A. Corsini, respectfully requests that a writ of certiorari be issued to review the orders of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department ("First Department"), in the three appeals in this case.

OPINIONS AND ORDERS BELOW

The January 12, 1999 opinion and order of the First Department in the third appeal in this case, *Gerard A. Corsini v. U-Haul Co. of New York, Inc. et al.*, is not yet reported (App. 3a).

The October 13, 1998 order of the First Department is unpublished (App. 4a).

The December 12, 1996 opinion and order of the First Department is reported at (*Gerard A. Corsini v. U-Haul International, Inc., et al.*, 234 AD2d 107, 651 N.Y.S.2d 29 (1996) (App. 16a) *lv. den.*, 90 N.Y.2d 978 (1997) (App. 14a).

The July 20, 1995 opinion of the First Department is reported at *Gerard A. Corsini v. U-Haul International, Inc., et al.*, 212 AD2d 288, 630 N.Y.S.2d 45 (1995) (App. 21a), *lv. den.*, 87 N.Y.2d 964 (1996) (App. 19a).

STATEMENT OF JURISDICTION

The most recent First Department order, which, in the third appeal, finally "determined" all of the constitutional issues in this case, reargued by petitioner in the trial court, First Department and New York Court of Appeals, as well as all remaining issues[1] was entered on January 12, 1999

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[1] The only remaining party was dismissed by order of the trial court on September 10, 1999 on petitioner's motion for voluntary discontinuance.

(App. 3a). Petitioner's timely motion before the First Department for leave to appeal that order in its entirety was denied by order entered on April 6, 1999 (App. 2a), and petitioner's timely motion before the New York Court of Appeals for leave to appeal that order in its entirety was denied by order entered on July 6, 1999 (App. 1a).

Petitioner had previously made timely motions before both the First Department and the New York Court of Appeals for leave to appeal the First Department's December 12, 1996 order dismissing, in this action, petitioner's second action *Sub nom. Corsini v. AMERCO, et al.* (App. 16a) as well as the First Department's July 20, 1995 order, all of which were denied. (App. 14a, 15a, 19a, 20a).

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment tothe United States Constitution provides in relevant part: "No State shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws...".

The First Amendment to the United States Constitution, in conjunction with the Fourteenth Amendment, prohibits governments from "abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

STATEMENT OF THE CASE

The fundamental question in this case is whether an appellate court should be permitted, in the interest of furthering extraordinary animus and bias of its members established as a matter of law in the record, to nullify the Constitution and the clear precedents of this Court establishing the flagrant violations of petitioner's due process rights (apparent, in part, from the face of the First Department opinions) by deliberately and repeatedly refusing to address the constitutional issues and precedents; and whether in dismissing petitioner's substantiated *pro se* personal injury actions on the ground of a lack of professionalism and civility to respondents' counsel, without any prejudice to respondents' ability to defend, based upon (a) petitioner's attendance at a public trial completely unrelated to petitioner's actions to observe and listen in preparation for the trial of his actions and (b) petitioner's objections at his deposition to established misconduct of respondents' counsel, the dismissal of petitioner's actions even more egregiously violated petitioner's Fourteenth Amendment rights as well as his First Amendment rights.

FIRST APPEAL

Petitioner commenced two separate personal injury actions[2] in the Supreme Court of the State of New York to recover substantial damages for multiple assaults and batteries committed by the general and assistant managers of the corporate defendants, including an assault and battery on

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[2] The second action, which also named AMERCO, the parent of the two corporate defendants in the first action, was necessitated by the running of the statute of limitations.

petitioner by the general manager with a shotgun which the manager, after chasing petitioner on a public street, pumped in petitioner's face before beating him, causing petitioner severe emotional distress.

Petitioner's deposition was held in December, 1993 at the office of respondents' counsel, who suspended the deposition and brought a motion seeking, among other things, dismissal on the sole ground that petitioner's conduct at his deposition violated a court order never referenced or relied upon.

The sworn affidavit of petitioner in opposition to that motion detailed serious and extensive unethical conduct and provocations of respondents' counsel at and before petitioner's deposition which respondents' counsel never disputed in this case even though the subject of numerous sworn submissions, establishing same as a matter of law.

Most seriously, it was established as a matter of law before the trial court that at petitioner's deposition respondents' counsel had unethically fabricated the highly inflammatory, offensive and provocative accusation that petitioner had mimicked his accent with respect to a single word ("perfectly") as an anti-Semitic slur when the transcript of the deposition later revealed that that word had never been used by anyone and when respondents' counsel was forced to admit on the record during the hearing in the trial court that he did not even have a Jewish accent, making his accusation impossible of accomplishment, all of which evidence was in the record before the trial court and the First Department in all appeals.

The trial judge, who had noted during oral argument that this was a highly emotional case and that she believed that petitioner had been assaulted with a shotgun, refused to grant respondents' motion. She did, however, find petitioner's "accusations about the professionalism and ethics of [respondents' counsel] conducting the deposition" "obstreperous and antagonistic", without any mention of the

merits thereof or petitioner's First Amendment arguments; warned petitioner that proper decorum was required thereafter and ordered the supervision of discovery by a judicial hearing officer before whom petitioner's deposition was completed with all questions permitted by the hearing officer fully answered. Respondents Jackson and U-Haul International, Inc. appealed that order to the First Department. Respondent U-Haul Co. of New York, Inc. did not appeal.

Justice Ross' Extraordinary Bias

When petitioner rose to argue before a five judge panel of the First Department in the first appeal, he was immediately met by an extraordinarily angry, hostile and emotional outburst from the late Justice Ross who, practically "jumping out of his skin", stated in an extremely confrontational tone of voice that he was particularly interested in respondents' counsel's accusation that petitioner had mimicked counsel's accent because he also had an accent, it being clear, as the first appellate decision confirms (App. 23a), that respondents' counsel had accused petitioner of mimicking his ethnic (i.e. "Jewish") accent and that Justice Ross meant to convey by his outburst that he too was Jewish and took personal offense based upon his ethnic identity with respondents' counsel. Moreover, when petitioner, completely taken aback by Judge Ross' hostility and bias, pointed out that the evidence before the court established as a matter of law that the accusation had been despicably fabricated, Justice Ross said that he did not care, making clear that he, as a Jew, believed that petitioner, a non-Jew, had no right to express his outrage at the fabrication of respondents' counsel's offensive accusation of anti-Semitism even if untrue, particularly in the forceful manner that petitioner had. (*See, e.g.*, App. 34a and 40a). And, in fact, the opinion of the court which followed based

dismissal in material part upon petitioner's objection to respondents' counsel's accusation (materially stated out of context to suggest that a slur had in fact been made; App. 23a) without any reference to the fact that the accusation had been established to be false as a matter of law. Although Justice Ross' misconduct was the subject of numerous evidentiary submissions, it was never disputed or addressed by respondents (who did, however, make an extraordinary motion to strike all references thereto from petitioner's second appellate brief, discussed below) or by the First Department, who maintained a mutual silence, as respondents' motion to strike had invited.

Judge Ross also angrily stated that the court had the power to discipline petitioner, and, even though the court's decision involved the summary imposition, without the benefit of cross-examination and the other safeguards and procedures afforded in a disciplinary proceeding, of a severe penalty for "unprofessional" conduct, Justices Ross and Rosenberger also caused a disciplinary proceeding to be commenced against petitioner, discussed below.

By its extraordinary decision and order dated July 20, 1995, the First Department, in violation of clear precedents of this Court, reversed the trial court's order and dismissed the complaint as to defendants-appellants without any prejudice to respondents' ability to defend, any prior notice to petitioner of the possibility of such a drastic sanction, any prior attempt to impose a lesser sanction or any permissible presumption concerning the established[3] merits of his complaints, based in material part upon

(a) a vague finding, without any supporting findings

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[3] As set forth in the record, a disinterested eyewitness had testified under oath to seeing the manager with the shotgun and to his admissions to having battered petitioner.

of fact, of a lack of "professionalism and civility" by petitioner to respondents' counsel as a result of petitioner's attendance at a public trial completely unrelated to petitioner's actions for the purpose of hearing respondents' counsel's opening statement, assessing his trial demeanor and effectiveness and estimating the length of that trial, and

(b) a lack of "professionalism and civility" by petitioner to respondents' counsel in expressing objections (stated by the court completely out of context) to conduct of respondents' counsel at petitioner's deposition whose serious and unethical nature had been established as a matter of law by uncontroverted evidence in the record but never mentioned by the court.

The Conduct Outside The Dismissed Actions Not The Subject of Respondents' Dismissal Motion Relied Upon For Dismissal

The very first matter addressed in the first appellate opinion involved conduct neither related to the dismissed actions nor the subject of respondents' dismissal motion[4]:

> "According to one of the defendants' counsel, plaintiff commenced harassing him even before a pre-trial deposition, by following defense counsel about the hallways of the courthouse and into a courtroom, while he was on trial in an unrelated case. Plaintiff admits that he followed his adversary, but claims that he was merely attempting to evaluate his opponent in preparation for this trial...."

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[4] Respondents' motion to dismiss was based solely on conduct at petitioner's deposition.

That the court was severely punishing petitioner for merely attending a public trial in which respondents' counsel was engaged is clear, among other things, from the court's incredible misstatement that "Plaintiff admits that he followed his adversary," which, in light of petitioner's unequivocal denial of having followed respondents' counsel in his sworn submission in the trial court, could only have been intended to mean "admits that he went to a courtroom and attended a trial in which respondents' counsel was engaged":

> "This court had scheduled my deposition to be taken one day after the conclusion of Mr. Isaac's trial in the Heller case. As I was obligated to be available on one day's notice from an event which was indeterminable, and as Mr. Isaac was certain to move for dismissal if I were not so available, I contacted the courtroom clerk in that case ... and made an effort, including three visits to the trial, to monitor the progress of the case. (I also took the opportunity to observe Mr. Isaac's trial demeanor in preparation for the trial of my case, as is the right of any citizen). I visited the courtroom on only three occasions for a total of no more than 1-½ hours during this 'trial for over a month' and spoke with the clerk (and by telephone with the plaintiff's counsel) to get an idea of the complexity and length of the trial.
>
> At no time did I ever follow, stalk or harass Mr. Isaac...".

Indeed, the court made no findings of fact supporting its conclusion of unprofessional conduct concerning that trial. Instead, it merely stated the parties' "positions" but in a highly misleading manner, including ignoring respondents'

counsel's preposterous characterization of petitioner's conduct as stalking", to suggest some impropriety. Moreover, the court did so even though respondents' counsel's description of the "harassment" before the trial court, and later to it, established that there had been no harassment:

"During the course of the Heller trial, Mr.Corsini called the plaintiff's attorney ... He said he was waiting for your affirmant to be finished with the trial ... Mr. Weiser refused to discuss the Heller case with him. Mr. Weiser also saw Mr. Corsini regularly in the courtroom and the corridors during the course of the trial. Further Mr. Corsini approached the court clerk during that trial and requested information about the matter from him. He asked to see, and was shown the court's card on this matter .... As is evident from the above, Mr. Corsini's actions and behavior have gone too far."[5]

Petitioner's Objections to Respondents' Counsel's Established Misconduct Relied Upon For Dismissal, The Court's Treatment of Which Confirms Its Bias

It is clear from the face of the First Department's July 20, 1995 decision that the dismissal of petitioner's complaint is based in material part upon a finding of a lack of professionalism and civility in expressing objections to conduct of respondents' counsel--misconduct never mentioned by the court even though not disputed by respondents'

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[5] The First Department later permitted respondents' counsel to submit, in violation of its rules, an affidavit "on his letterhead" of the opposing counsel he had represented had witnessed the "harassment" which described the same innocent conduct without any mention of petitioner in relation to respondents' counsel.

counsel and therefore established in the record as a matter of law.[6]

As stated in submissions in the trial court, petitioner deeply regrets not having expressed his objections to the misconduct of respondents' counsel without personalizing them even under the extreme provocations and circumstances of this case, including post-traumatic stress disorder from the incident which Justice Rosenberger specifically addressed in

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[6] It was established that respondents' counsel had commenced petitioner's deposition by insisting for pages, over petitioner's objections, that petitioner provide information expressly protected from disclosure by a court order; repeatedly called petitioner a "liar"; repeatedly falsely accused him of screaming and yelling to create a false record; undermined the entire proceeding by instructing the court reporter not to take down certain of petitioner's objections to his questions and, most offensively, falsely accused petitioner of making an anti-Semitic slur, among other misconduct.

It was also established that prior to petitioner's deposition in the first action, respondents' counsel, without any relevance to any issue before the trial court, had called Petitioner "mentally sick" in open court to distract attention from counsel's failure to deny sworn statements of his established misconduct relevant to discovery motions, including "sewer service" of discovery documents to create the false appearance that petitioner was not cooperating in discovery; and, in his first blatant attempt to inject racism into the case, had filed on behalf of the assistant manager a multi-million dollar lawsuit against petitioner falsely claiming that petitioner had made vile racial remarks toward her at the time of the incidents which a disinterested eyewitness testified under oath in respondents' counsel's presence were never made (but which, after voluntarily dismissing that action, respondents' counsel nonetheless repeated to the First Department in the appeals in this case even though completely outside the record, irrelevant to any issue in the appeals and a violation of both the First Department rules and the Code of Professional Responsibility). Moreover, in the trial court, respondents' counsel had called petitioner "mean-spirited and evil" and, on numerous occasions, had stated that petitioner's written submissions were the "ramblings" of a person with an "unstable nature".

oral argument, outrageously suggesting that petitioner was 'mentally sick' because of that diagnosis, but never mentioned in his opinion. However, the merits of his objections to that misconduct, although never mentioned by the court, were established as a matter of law in the record, which the court quoted out of context from an uncorrected transcript and otherwise deliberately distorted without exception.

A telling illustration is the court's incredible reliance on the following for dismissal:

> "At one point in the deposition, when counsel objected to plaintiff's mimicking his speech pattern in a manner suggesting an ethnic slur, plaintiff commenced a tirade that counsel, if he was Jewish, had a low image of himself and Jews." (App. 23a).

Incredibly, the court ignored all of the undisputed evidence establishing as a matter of law that counsel's accusation had been fabricated, makes it appear that petitioner had in fact uttered an anti-Semitic slur and then punishes the expression of his objection ("tirade") to counsel's misconduct after taking petitioner's statements completely out of context so that no one would understand what had taken place. Petitioner's full response to respondents' counsel's outrageous accusation was:

> "First of all, this is another incident where your client's bid is *[sic]*. I have been accused of being a racist, and now you're trying to make me into an anti-Semitic [sic] which is as far from the truth [as] anything could be, without any grounds or basis whatsoever. You must have a very low self-esteem to [trade] on the [oppression] of the Holocaust of

> your people, and if you are Jewish, I assume given your name, I never thought of it being Jewish and I never intended by any means or any suggestion or any statements or any indication of any kind that you're Jewish or that there is anything to be drawn from that.
>
> And [your] suggestion to the contrary is a despicable effort to put me on the defensive and to accuse me wrongly and is [trading] on the oppression of Jews, and you did it after Yom Kippur, the holiest holiday of your religion, and it's a disgrace and it's another incident of how low and slimy you're willing to get for your client. You must have a very low image of Jews and a very low image of yourself to trade on them in such a despicable way."

Petitioner's motion for reargument and for leave to appeal were denied by the First Department (App. 20a) as was petitioner's motion for leave to appeal to the New York Court of Appeals (App. 19a), notwithstanding petitioner's arguments that the dismissals violated petitioner's Fourteenth Amendment due process rights as established by clear precedents of both this Court and the New York Court of Appeals argued by him. (App. 43a).

THE SECOND APPEAL

A newly assigned trial judge, who had recently been disciplined for extremely serious misconduct prompting *The New York Times* to call in an editorial for her removal from the bench, and who clearly understood the First Department's animus toward petitioner evident from its decision, granted respondents' motion to dismiss petitioner's second, separate action on the inapplicable grounds of

collateral estoppel even though there had been no prior determination on the merits and both controlling state decisional and statutory law, not mentioned by her, precluded a dismissal of the second action.[7]

Respondents' Motion To Strike Petitioner's Constitutional Arguments

After petitioner had filed his appellate brief addressing the unconstitutional bias of the first appellate panel precluding application of the first order in the second action as well as the violation of petitioner's due process right to a hearing on the merits of his claims by doing so, respondents' counsel, before petitioner could make a recusal motion, made an extraordinary motion to strike all statements from the appellate brief concerning the bias and misconduct of the court, (App. 17a).

Justice Kupferman, who heard the motion and considered petitioner's constitutional arguments both as to the violation of his Fourteenth Amendment due process rights by the first panel and the impropriety under the First Amendment and Fourteenth Amendment of striking any portion of his brief (App. 39a-42a), denied respondents' counsel's motion to strike and *sua sponte* recused all justices who had sat on the first appeal from the second appeal. (App. 18a). He further ruled that respondents had to respond to the constitutional arguments as made. However, after requesting and obtaining an extension of time to do so, respondents did not then or any time dispute the facts of

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[7] CPLR Rule 5013 expressly provides that a "judgment dismissing a cause of action before the close of the proponent's evidence is not a dismissal on the merits unless it specifies otherwise...". *See also Maitland v. Trojan Electric & Machine Co., Inc.*, 65 N.Y.2d 614, 491 N.Y.S.2d 147 (1985).

Judge Ross' extraordinary bias expressed by him in open court or the distortions and bias of Justice Rosenberger's opinion for the court. Nor did respondents then or ever address the precedents of this Court repeatedly cited by petitioner establishing the violation of his Fourteenth Amendment rights. (*See, e.g* App. 39a-42a and citations to petitioner's brief therein; and 27a-31a).

Notwithstanding the recusal order, when petitioner arrived for oral argument in the second appeal, one of the justices who had been recused was sitting on the panel, and when petitioner mentioned his recusal to the court, the presiding judge expressed great upset that any judge would, for any reason, recuse another judge and sought to induce petitioner to waive his constitutional objections. When petitioner declined to do so, the presiding judge permitted the recused judge to deliberate, and during oral argument petitioner was actively discouraged by the court from making any constitutional arguments as to which the panel showed no interest.

The second panel subsequently entered an order dismissing, in petitioner's first action, with the participation of a justice from the first appellate panel petitioner's second action on the completely "novel" ground of "a dismissal in the nature of a default" which not only irrevocably conflicted with controlling state decisional and statutory law never mentioned by it[8] but also, given the lack of notice which even a defaulting party is afforded when failing to answer a complaint, exacerbated the constitutional infirmities as made clear by precedents of this Court cited by petitioner in his appellate brief but also never mentioned by the second panel. (See App. 40a referencing citations in petitioner's brief).

The second panel also reversed Justice Kupferman's recusal order without any mention of the constitutional basis

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[8] *Id.*

for that order or any grounds for the reversal. (App.16a). Petitioner's timely motions before the First Department and the New York Court of Appeals for leave to appeal were denied. (App. 14a and 15a).

DISCIPLINARY PROCEEDINGS COMMENCED BY JUSTICES ROSS AND ROSENBERGER

Notwithstanding the severe penalty imposed by the dismissal of petitioner's substantial actions on the grounds of "a lack of professionalism and civility", Justices Ross and Rosenberger, as had been threatened by Justice Ross during oral argument, caused a disciplinary complaint to issue against petitioner which was incorrectly and misleadingly styled a *"sua sponte"* complaint of the First Department's disciplinary committee. The committee thereafter determined to issue an admonition, the mildest form of discipline, which petitioner declined, requesting a full hearing with the cross-examination of respondents' counsel and others guaranteed under the disciplinary rules but denied petitioner by the First Department in dismissing his actions for unprofessional conduct" toward respondents' counsel.

However, on the eve of the hearing before a highly competent and distinguished panel as to which petitioner had waived any constitutional objections (the panel having determined that should an appeal be necessary it would be made to the Second Department), Justice Rosenberger, in concert with the clerk of the First Department for the purpose of preventing a hearing in the First Department on Petitioner's bias claims, arranged, against petitioner's interests and without notice to him or the hearing panel, for the issuance of *a "sua sponte"* order transferring the disciplinary matter to the Second Department based upon the very same allegations of bias made repeatedly by petitioner in his appeals. (App. 5a). That order, which was "referred" to five justices who had not participated in any appeal, made

clear that no justice of the First Department under the circumstances of this case, involving as it did extreme bias of fellow jurists, could deliberate impartially and was highly relevant to petitioner's later recusal and transfer motion in his third appeal. However, that motion, unlike the court's own motion, was "referred", not to the justices with no prior involvement in this case, but to Justice Rosenberger and other members of the first and second panels whose bias was in issue and who denied same without any comment on the First Department's prior transfer order based upon the very same bias at issue in the appeal or the controlling precedents of this Court briefed by petitioner.(App. 4a).

PETITIONERS FEDERAL CIVIL RIGHTS COMPLAINT

Because it was clear to petitioner that there was absolutely no possibility of obtaining a fair and impartial tribunal in the First Department (or the new trial court) which was determined to deny petitioner any benefit of controlling state or constitutional law (as completely confirmed by subsequent proceedings petitioner filed a civil rights action in the Southern District of New York seeking, among other things, to enjoin all judges who had participated in any prior appeals from participating in this case or in any other matter involving petitioner, including on behalf of clients. Petitioner argued that because the First Department had deliberately never addressed the issue of the unconstitutional bias of the court precluding review by the New York Court of Appeals as of right and because that bias affected petitioner as an attorney beyond and regardless of the outcome of his case, including in his disciplinary proceeding, the *Rooker-Feldman* and *Harris v. Younger* doctrines did not apply. The Second Circuit, however, upheld summary judgment dismissing the complaint based upon the *Rooker-Feldman* doctrine. (App. 11a).

Nonetheless, like the respondents in this case, no justice of the First Department submitted any evidence in opposition to the sworn affidavit submitted by petitioner in support of his summary judgment motion establishing the unconstitutional bias of the First Department in the first two appeals, including the extraordinary statements of Justice Ross and the bias of Justice Rosenberger in the first appeal and the lack of an impartial tribunal in the second appeal.

THE THIRD APPEAL

The First Department's first order of dismissal had expressly limited the dismissal therein to "defendants-appellants", providing that "[tlhe clerk is directed to enter judgment in favor of defendants-appellants dismissing the complaint, with costs." (App. 26a).

Respondents' counsel thereafter sought to include in the judgment respondent U-Haul Co. of New York, Inc. which had never filed a notice of appeal and was not an appellant but which respondents' counsel had nonetheless improperly included as a "defendant-appellant" in his appellate caption in violation of the CPLR and First Department rules. The clerk of court properly refused to include U-Haul Co. of New York, Inc. in the judgment, and judgment was entered solely in favor of respondents Jackson and U-Haul International, Inc. (App. 9a), as mandated by controlling state decisional and statutory law.

Respondent U-Haul Co. of New York, Inc. then moved before the trial court to amended the judgment to include it, which the trial court granted without any mention of either the controlling state decisional and statutory law

mandating a different result[9] or the violations of petitioner's due process rights to a fair and impartial tribunal and to a hearing on the merits of his claims that would result therefrom as argued by petitioner. (App. 36a-38a).

"Incredibly", even though respondent U-Haul Co. of New York, Inc. had never filed a notice of appeal and could therefore could not be a "defendant-appellant" as defined by CPLR or otherwise entitled to appellate relief, the trial court concluded that the First Department had nonetheless intended to grant relief to that party as a " defendant-appellant" (i.e. to ignore controlling law) based solely on a citation to the published opinion which makes absolutely no mention whatsoever of U-Haul Co. of New York, Inc. and expressly limits relief to "defendants-appellants". (App. 2la-26a) .

Petitioner's Recusal and Transfer Motion In The Third Appeal

As mentioned above, petitioner' s motion in the third appeal to recuse the entire First Department and to transfer the case and appeal to the Second Department (App. 32a-35a) was referred to Justice Rosenberger and other members of the first two appellate panels whose bias was the subject of the motion, who denied same without any mention of the First Department's *sua sponte* order transferring petitioner's disciplinary proceeding to the Second Department based upon that very same bias or the precedents of this court mandating recusal. (App.32a-35a, 4a and 5a).

After petitioner wrote to the Chief Administrative Judge of the State of New York and Presiding Justice of the

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[9] CPLR Sections 5511, 5512, 5514(c), 5515 and 5520(c) and *Hecht v. City of New York*, 60 N.Y.2d 57 (1983) . Also, CPLR Section 5019(a) precludes any amendment "affecting a substantial right of a party", which the dismissal of an additional party clearly involves.

First Department complaining of this extraordinary bias, the clerk of the First Department, who had arranged for the *sua sponte* transfer order in consultation with Justice Rosenberger, wrote petitioner that the First Department would consider his letter a motion for reconsideration. However, that motion was never considered before the appeal (making clear the inevitable biased outcome), and the third appellate panel denied it without comment. It also affirmed the trial court's order directing amendment of the complaint on the very same, untenable grounds as the trial court--that an opinion which made no mention whatsoever of U-Haul Co. of New York, Inc. and expressly limited dismissal to "defendants-appellants" somehow indicated an intention to include that non-appealing party in the judgment) without any mention of the controlling state decisional and statutory law or precedents of this Court mandating a different result which had been argued by petitioner in his brief and recusal motion. (App. 32a-35a; See 28a).

Bias Of The Presiding Judge And Court In The Third Appeal

During oral argument in the third appeal, the presiding justice confirmed that no First Department judge could impartially participate in a case involving serious misconduct of fellow members of the court, in particular the late Judge Ross. After petitioner had addressed the court concerning Justice Ross' extraordinary bias established in the record, Justice Lerner said that although he had permitted petitioner to "vilify" Justice Ross (confirming the seriousness of his bias and misconduct), petitioner should know that Justice Ross was a war hero who had been injured in the attack on Pearl Harbor and had been in great pain all of his life. When petitioner sought to address that biased comment, Justice Lerner would not allow him to do so.

The court also permitted respondents' counsel, who

did not address one issue in the appeal, including the constitutional issues and authorities or controlling state law, to devote his entire oral argument, in violation of both the First Department rules and the Code of Professional Responsibility, to the vile allegations of racism that had formed the basis of his client's dismissed complaint against petitioner disproved by the testimony of an eyewitness in his presence, even though completely irrelevant to any issue in the appeal and completely outside the record. The court also required petitioner to address those highly inflammatory, irrelevant and disproved accusations.

Moreover, prior to oral argument, petitioner happened to be seated in the reception area of the courthouse when the courtroom officer came out of the courtroom and was informed by another office, pointing to a piece of paper, that the clerk of the First Department wanted "this case watched very carefully". After getting acknowledgment from the courtroom officer, the officer threw the paper into the wastebasket, which petitioner retrieved and which had only the name of this case written on it.

Petitioner made motions before both the First Department and the New York Court of Appeals for permission to appeal the First Department's order affirming the amendment of the judgment and denying petitioner's recusal and transfer motion, setting forth, yet again, all of the constitutional issues and arguments made herein (App. 27a) as well as the bias of the third appellate panel, which motions were denied. (App. 1a and 2a).

REASONS FOR GRANTING THE WRIT

I.

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINIONS BELOW NOT ONLY CONFLICT WITH DECISIONS OF THIS COURT ESTABLISHING THE CLEAR VIOLATIONS OF PETITIONER'S DUE PROCESS RIGHTS AND ARE OTHERWISE REPUGNANT TO FUNDAMENTAL NOTIONS OF DUE PROCESS AND FIRST AMENDMENT FREEDOMS AS ENUNCIATED BY THIS COURT BUT ALSO INVOLVE THE WILLFUL AND REPEATED VIOLATION BY VIRTUALLY THE ENTIRE FIRST DEPARTMENT OF PETITIONER'S CONSTITUTIONAL RIGHTS AND DISREGARD OF THIS COURT'S PRECEDENTS IN FURTHERANCE OF REPUGNANT ETHNIC BIAS OF ITS MEMBERS

This Court and the New York Court of Appeals have made clear that "no person" can be denied his due process right to a hearing on the merits of his claims, even in aid of the court's own valid processes, without prior notice of the possibility of the imposition of such a drastic sanction, the prior imposition of a lesser sanction as required to address any prejudice and a permissible presumption that the claims lacked merit. See *Insurance Corp. of Ireland v. Compagnie Des Bauxites de Guinee,* 456 U.S. 694, 705-9 (1982); *Societe International v. Rogers,* 357 U.S. 197, 209 (1958) ("The provisions of Rule 37 [CPLR 3126's analog] which are here involved must he read in light of the provisions of the Fifth Amendment that no person shall be deprived of property without due process of law, and more particularly against the opinion of this Court in *Hovey v. Elliot,* 167 U.S. 409 (1897)...These decisions establish that there are constitutional limitations upon the power of courts, even in the aid of their

own valid processes, to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause"); *Hovey v. Elliot,* 167 U.S. 409 (1897); and *Feingold v. Walworth Bros., Inc.,* 238 N.Y. 446, 454-5, 144 N.E. 675, 677 (1924, J. Pound) (" The provisions of section 325, Civil Practice Act [CPLR 3126's predecessor], are elastic enough to enable the court to fit the punishment to the offense, and to restrict the maximum punishment to a 'proper case'... The line may be thus be definitely drawn between the proper punishment for suppressing evidence and the improper punishment as for contempt merely. So far as the [complaint is dismissed] as a punishment for contempt of court rather than a penalty for disobedience to (an) order, it comes within the condemnation of *Hovey v. Elliot.* The power to punish is limited by the presumption which attaches to the suppression of the evidence suppressed").

In *Hovey, supra,* this Court concluded over one hundred years ago that the proposition that a court could deprive a party of his claims or right to defend in an action based upon contempt "is, in the very nature of things, to convert the court exercising such an authority into an instrument of wrong and oppression, and hence to strip it of that attribute of justice upon which the exercise of judicial power necessarily depends." 167 U.S. at 413-414.

The proposition that a court could or would permit one of its members to express outrageous ethnic bias in open court (*See, e.g.*, App. 34a and 40a) or thereafter or otherwise dismiss a party's substantiated claims involving an assault on him with a shotgun, based upon incivility to opposing counsel, much less incivility not involving any proceeding in the dismissed actions, any contempt, any prejudice to respondents' ability to defend or any ground of respondents' motion, is so repugnant to fundamental notions of fairness and due process and such an extreme abuse of judicial authority as to shock reason and conscience. It can only be explained by the extraordinary judicial ethnic animus

and bias established in this case which resulted in the First Department's treating respondents' counsel as the real party in interest and favoring him with a dismissal based upon that animus and bias, thereby also denying petitioner his established due process right to fair and impartial tribunals, *See Marshall v. Jerrico, Inc.* 446 U.S. 238, 242-243 (1980), and equal protection of the laws.

That a court would also repeatedly disregard the precedents of this Court establishing its clear violations of petitioners' constitutional rights, the controlling state decisional and statutory law precluding dismissal as well as its own prior recusal and transfer orders and engage in concerted silence to deny petitioner his constitutional and state rights with such dogged determination on such an extensive and pervasive scale, involving all but one justice in the First Department whose efforts to protect petitioner's constitutional rights were met with anger and reversal, is as frightening as it is threatening to the foundations of the New York State judicial system to which the federal system so widely defers for the protection of constitutional issues.

It is respectfully submitted that where, as in this case, virtually all members of a state appellate court have willfully and flagrantly disregarded both the Constitution and their constitutional duties in order to further or cover-up extraordinary ethnic animus and bias of its members, stripping the court "of that attribute of justice upon which the exercise of judicial power necessarily depends", a writ of certiorari is not only warranted but compelled.

Obviously, the First Department has concluded that it can "prevent" review by this Court, clearly the only resort which petitioner ever had for the protection of his constitutional rights, by maligning petitioner in its intentionally distorted opinion and by deliberately failing to mention the constitutional issues, the clear precedents of this Court and controlling state law which preclude dismissal, the established bias of its members or the established misconduct

of respondents' counsel repeatedly cited by petitioner, and thereby violate with impunity the very Constitution it has sworn to uphold.

In so doing, however, the First Department has not only become an "instrument of oppression" of petitioner's fundamental constitutional rights as well as a threat to the rights of every citizen whom any judge may dislike for any reason but also has rendered decisions which, although irrevocably irreconcilable with the precedents of this Court and fundamental due process, are nonetheless "good" law both in the First Department, and given denial of leave by the New York Court of Appeals, in New York State.

It is respectfully submitted that not only the interests of petitioner but also that of this Court in upholding its own longstanding precedents involving fundamental constitutional rights and of the New York State judicial system compel the issuance of a writ to restore and reaffirm the fundamental freedoms dispensed with by the First Department so perversely and to assure that the First Department is, in fact, not just presumption, an appropriate forum for the protection of Constitutional rights and the resolution of constitutional issues.

II

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINIONS BELOW CONFLICT WITH DECISIONS OF THIS COURT GUARANTEEING THE FUNDAMENTAL FIRST AMENDMENT RIGHT TO LISTEN, OBSERVE AND ASSEMBLE IN PLACES OPEN TO THE PUBLIC

This Court has made clear that:

> "In guaranteeing freedom such as those of speech and press, the First Amendment can be

read as protecting the right of everyone to attend trials ... '[T]he First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw'... Free speech carries with it some freedom to listen ... 'In a variety of contexts this Court has referred to a First Amendment right to 'receive information and ideas'...

The right of access to places traditionally open to the public, as criminal trials have long been, may be seen as assured by the amalgam of the First Amendment guarantees of speech and press and their affinity to the right of assembly is not without relevance ... 'The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental.'... People assemble in public places not only to speak or to take action, but also to listen, observe, and learn; indeed, they may 'assembl[e] for any lawful purpose ... a trial courtroom also is a public place where the people generally... have a right to be present, and where their presence historically has been thought to enhance the integrity and quality of what takes place." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575-78 (1980) (Justice Steward concurring: "... the First and Fourteenth Amendments clearly give the press and the public a right of access to trials themselves, civil as well as criminal." 408 U.S. at 599) (citations omitted).

Although *Richmond Newspapers* involved a criminal trial, the broad First Amendment principles stated by the Court in that case clearly apply to civil trials, as Justice Steward specifically stated in his concurring opinion, where, as here, a civil trial was open to the public and the only issue is whether a citizen who attended that trial to learn and observe can be punished for doing so by having substantial claims unrelated to that trial dismissed.

That notion is as patently offensive as it is surreal and chilling, and it is respectfully submitted that the answer is beyond any doubt, particularly where the dismissing court punished the mere attendance at a public trial without any basis or finding to support a conclusion that it constituted "harassment", much less by a standard of proof compatible with the First Amendment; where petitioner's attendance at the trial was not a ground for respondents' dismissal motion and where there was clearly no contempt or disruption of either the court in the dismissed actions or the court holding the public trial, only the displeasure of respondents' counsel and members of the First Department who openly or otherwise identified with him on ethnic grounds.

CONCLUSION

One hundred years ago, this Court, in *Hovey v. Elliot,* supra, stated that both reason and conscience precluded dismissals of claims based upon contemptuous conduct alone and that such dismissals would render a court an "instrument of oppression" and "strip it of that attribute of justice upon which the exercise of judicial power necessarily depends." 167 U.S. at 413-414. When one hundred years later virtually all members of an appellate court to whom *Hovey* and its progeny have been repeatedly cited, dismiss petitioner's substantial and substantiated claims even though his alleged conduct involved no contempt, caused no prejudice and gave rise to no permissible

presumption about the merits of his claims, based in material part upon his mere attendance at an unrelated public trial, after a senior member of the court had expressed extraordinary ethnic bias in open court, it is respectfully submitted that the case involves issues of the most vital importance, namely the very "attribute of justice upon which the exercise of judicial power [in the First Department] necessarily depends", which compel the issuance of a writ.

Accordingly, Petitioner respectfully requests that his petition for a writ of certiorari be granted.

Respectfully Submitted
GERARD A. CORSINI
Petitioner Pro-se
433 West 21st Street
New York, New York 10011
(212) 255-3232

APPENDIX

STATE OF NEW YORK
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the sixth day of July, 1999

PRESENT, Hon. JUDITH S. KAYE, Chief Judge, presiding.

1-10 Mo. No. 651

Gerard A. Corsini,

Appellant,

v.

U-Haul Co. of New York, Inc. & C.,

Respondent,

and U-Haul International, Inc., et al.,

Defendants.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied with one hundred dollars costs and necessary reproduction disbursements.

Stuart M. Cohen

Clerk of the Court

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on April 6, 1999.

Present: Hon. Alfred D. Lerner, Justice Presiding,
Peter Tom
Angela M. Mazzarelli
David B. Saxe, Justices.

----------x

Gerard A. Corsini,

Plaintiff-Appellant,

-against-

M-1160
Index #26244/92

U-Haul Co. of New York, Inc., etc.,

Defendant-Respondent,

-and-

U-Haul International, Inc., et al.,

Defendants.

----------x

Plaintiff-appellant having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on January 12, 1999 (Appeal No. 3294),

NOW, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

ORDERED that the motion be and the same hereby is denied, with $100 costs.

ENTER:
Clerk

Lerner, J.P., Tom, Mazzarelli, Saxe, JJ.

3294 Gerard A. Corsini,

Plaintiff-Appellant,

Pro Se

-against-

U-Haul Co. of New York, Inc., etc.,

Defendant-Respondent,

Allen H. Isaac

U-Haul International, Inc., et al.,

Defendants.

Order, Supreme Court, New York County (Lorraine Miller, J.), entered on or about July 30, 1998, which granted the motion of defendant U-Haul Co. of New York, Inc. to amend a judgment of dismissal entered April 20, 1998, to include it among the parties as to whom the complaint was dismissed, unanimously affirmed, with costs.

In granting the motion to amend the judgment, the motion court correctly noted that this Court directed dismissal of the action as against defendant-respondent on a prior appeal (see, Corsini v U-Haul Intl., 212 AD2d 288, lv denied 87 NY2d 964).

M-7236 - Corsini v U-Haul, et al.

Motion to reargue M-5758 denied.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JANUARY 12, 1999 - CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on October 13, 1998

Present - Hon. Ernst H. Rosenberger, Justice Presiding
Betty Weinberg Ellerin
Eugene Nardelli
Milton L. Williams, Justices

----------x

Gerard A. Corsini,

Plaintiff-Appellant,

-against-

M-5758
Index No. 26244/92

U-Haul Co. of New York, Inc. (formerly U-Haul Co. of Metro New York, Inc.),

Defendant-Respondent,

-and-

U-Haul International, Inc., Ed Villavicenico (a/k/a Edward Villa) and Shelly Jackson,

Defendants.

----------x

The above-named plaintiff-appellant, in connection with the appeal from an order of the Supreme Court, New York County, entered on or about July 30, 1998, having moved for an order transferring hearing and determination of said appeal, as well as a companion matter under Index No. 36504/92, to the Appellate Division, Second Department, for assignment to a trial court,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion be and the same hereby is denied in its entirety.

ENTER: Clerk

UNPUBLISHED

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, September 16, 1997

Present -- Hon. Francis T. Murphy, Presiding Justice
W. Leo Milonas
Peter Tom
Angela M. Mazzarelli
Nicholas Colabella, Justices

----------x

In the Matter HP No. 10/97

of M - 5792

an Attorney

----------x

This Court having referred a matter to the Departmental Disciplinary Committee (Hal R. Lieberman, Chief Counsel) for investigation and appropriate action, and the Clerk of the Court having received a letter dated September 12, 1997 from the respondent attorney and in the course of a conversation with the clerk on September 15, 1997 regarding said letter, respondent having made allegations of bias against certain justices of the Court,

Now, on the Court's own motion,

It is ordered that the above captioned matter is transferred to the Appellate Division, Second Judicial Department.

ENTER:
Clerk

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

GERARD A. CORSINI,

Index No. 26244/92

Plaintiff,

-against- JUDGMENT

U-HAUL INTERNATIONAL, INC., U-HAUL CO. OF NEW YORK, INC. (formerly U-HAUL CO. OF METRO NEW YORK, INC.) ED VILLAVICENCIO (a/k/a EDWARD VILLA) and SHELLY JACKSON,

Defendants.

----------X

The complaint in the above-entitled action having been filed and the summons and a copy of the complaint having been served on all defendants in 1992; and defendants U-Haul International, Inc. and Shelly Jackson having appealed to the Supreme Court, Appellate Division, First Department ("Appellate Division"), from an order of the Supreme Court, New York County (Beverly S. Cohen, J.), entered on or about September 2, 1994, which denied their motion to dismiss the complaint; and the Appellate Division by decision and order dated July 20, 1995, having ordered that "The Clerk is directed to enter judgment in favor of defendants-appellants dismissing the complaint, with costs",

Now, on motion of Plaintiff by its attorneys Gerard A. Corsini and the Law Offices of Gerard A. Corsini, it is

ADJUDGED, that defendants U-Haul International, Inc. and Shelly Jackson and U-Haul Co. of New York, Inc. (formerly U-Haul Co. of Metro New York, Inc.) have judgment against dismissing the complaint in this action as

against defendants U-Haul International, Inc. and U-Haul Co. of New York, Inc. (formerly U-Haul Co. of Metro New York, Inc.) and Shelly Jackson only, and it is further

ADJUDGED, that defendants U-Haul Co. of New York, Inc. (formerly U-Haul Co. of Metro New York, Inc.) and U-Haul International, Inc. and Shelly Jackson do recover of Plaintiff Gerard A. Corsini costs and disbursements taxed at 3,009.08 and that defendants shall have execution therefor.

Creditors:
1) U-Haul International Inc.
2727 North Central Avenue
Phoenix, Arizona 85009

2) Shelly Jackson
562 W. 23rd St.
New York, New York

3) U-Haul Co. of New York, Inc.
(formerly U-Haul Co. of Metro
New York, Inc.)
230 West 23rd Street
Bronx, New York

Debtor: Gerard Corsini
433 W. 21st Street #9A
NY, NY 10011

8/18/98 amended by Order of Judge Lorraine Miller dated 7/13/98 and filed 7/22/98. Judgment entered this 20th day of April, 1998

FILED APRIL 20, 1998 - COUNTY CLERK'S OFFICE NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Hon. LORRAINE S. MILLER, Justice PART 9

Corsini — Index No. 26244-B

-v- — Motion Date

U-Haul — Motion Seq. No. 015

— Motion Cal. No.

Upon the foregoing papers, It is ordered that this motion by defendant, U-Haul Co. of New York, to amend the Judgment and dismissal entered 4/20/98, nunc pro tunc, to include defendant, U-Haul Co. of New York is hereby granted. It is clear from the decision of the First Department that it intended to grant dismissal to U-Haul Co. of New York as well as U-Haul International, Inc. and Shelly Jackson (see, Corsini v. U-Haul International, Inc., 212 AD2d 288 1st Dept. 1999).

Accordingly, the motion is granted and the Clerk is directed to amend the Judgment entered 4/20/98 to include dismissal of the case as to defendant, U-Haul Co. of New York, Inc.

Dated: 7/13/98 — L.S.M/J.S.C.

Check one: X Final Disposition — Non-Final Disposition

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

GERARD A. CORSINI,

Index No. 26244/92

Plaintiff,

-against- JUDGMENT

U-HAUL INTERNATIONAL, INC., U-HAUL CO. OF NEW YORK, INC. (formerly U-HAUL CO. OF METRO NEW YORK, INC.), ED VILLA VICENCIO a/k/a EDWARD VILLA) and SHELLY JACKSON,

Defendants.

----------X

The complaint in the above-entitled action having been filed and the summons and a copy of the complaint having been served on all defendants in 1992; and defendants U-Haul International, Inc. and Shelly Jackson having appealed to the Supreme Court, Appellate Division, First Department ("Appellate Division"), from an order of the Supreme Court, New York County (Beverly S. Cohen, J.), entered on or about September 2, 1994, which denied their motion to dismiss the complaint; and the Appellate Division by decision and order dated July 20, 1995, having ordered that "The Clerk is directed to enter judgment in favor of defendants-appellants dismissing the complaint, with costs",

NOW, on motion of Plaintiff by its attorneys Gerard A. Corsini and the Law Offices of Gerard A. Corsini, it is

ADJUDGED, that defendants U-Haul International, Inc. and Shelly Jackson have judgment against the Plaintiff dismissing the complaint in this action as against defendants U-Haul International, Inc. and Shelly Jackson only, and it is further

ADJUDGED that defendants U-Haul International, Inc. and Shelly Jackson do recover of Plaintiff Gerard A. Corsini costs and disbursements taxed at 3,009.08 and that defendants shall have execution therefor.

Creditors:
1) U-Haul International, Inc.
2727 North Central Avenue
Phoenix, Arizona 85004

2) Shelly Jackson
562 W. 23rd Street
New York, New York

Debtor:
Gerard A. Corsini
433 W. 21st Street #9A
New York, New York 10011

s/Judgment Clerk

Judgment entered this
20th day of April, 1998

FILED
APRIL 20, 1998
COUNTY CLERK'S OFFICE
NEW YORK

UNITED STATE COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

At a stated term of the United State Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 12th day of May, one thousand nine hundred and ninety-eight.

PRESENT:

Hon. John M. Walker, Jr.,
Hon. Guido Calabresi, Circuit Judges,
Hon. Jane A. Restani, of the United States Court of International Trade sitting by designation.

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GERARD A. CORSINI,

Plaintiff-Appellant,

-v-

97-9233

Judges DAVID ROSS, ERNEST H. ROSENBERGER, BETTY WEINBERG ELLERIN, JOSEPH P. SULLIVAN, MILTON L. WILLIAMS, RICHARD H. WALLACH, ISRAEL RUBIN, EUGENE NARDELLI and RICHARD T. ANDRIAS, of the Appellate Division, First Department of the Supreme Court of the State of New York,

Defendants-Appellees,

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APPEARING FOR APPELLANT: Gerard A. Corsini, Esq., Pro Se, New York, N.Y.

APPEARING FOR APPELLEES: Michael Kennedy, Esq., Assistant Attorney General, New York, N.Y.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York (Koeltl, J.), and was submitted.

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of said district court be and it hereby is AFFIRMED.

Plaintiff-appellant Gerard Corsini appeals from the August 29, 1997, judgment entered by the district court dismissing Corsini's complaint, brought pursuant to 28 U.S.C. § 1983, alleging that the defendants-appellees, New York State Appellate Justices David Ross, et al., violated his right to due process under the Fifth and Fourteenth Amendments by dismissing Corsini's state tort actions in response to his unprofessional and uncivil conduct toward opposing counsel, See Corsini v. U-Haul Int'l, Inc, 651 N.Y.S. 2d 29 (1st Dept 1996); Corsini v. U-Haul Int'l, Inc., 630 N.Y.S. 2d 45 (1st Dept 1995). Corsini sought a declaratory judgment that the state court decisions were unconstitutional, as well as an injunction barring appellees from "participating or deliberating with respect to any case or matter involving plaintiff." Complaint p 39.

The district court granted the appellees' motion for summary judgment on the grounds that it lacked jurisdiction to hear the case under the Rooker-Feldman doctrine, see District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923), and alternatively that, since the state court proceedings had not yet terminated, it was appropriate for the district court to abstain under Younger v. Harris, 401 U.S.

37 (1971). See Corsini v. Ross, No. 97 CIV. 0969 (JGK), 1997 WL 539950 (S.D.N.Y. Aug. 28, 1997).

Corsini's complaint plainly falls within the Rooker-Feldman doctrine, depriving the district court of jurisdiction to hear the case. His claim for a declaratory judgment would require the district court to decide the validity of the state court's decision dismissing Corsini's state tort actions, precisely what Rooker forbids. Similarly, even assuming the injunction sought by Corsini barring the appellees from participating in judicial matter involving him were possible, the district judge would be required to review the propriety of the state court decision in resolving the merits of Corsini's claim. As stated in Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 25 (1987) (Marshall, J., concurring), a federal claim is "inextricably intertwined" with the merits of a state court decision, and therefore is barred by Rooker-Feldman, "if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it."

For the reasons stated above, we find that the district court properly determined that it lacked jurisdiction over Corsini's claims under Rooker-Feldman. We need not reach the issue of whether Younger abstention would also have barred the case.

Accordingly, the judgment of the district court is AFFIRMED.

FOR THE COURT,
George Lange III, Clerk
By: Lucille Carr, Deputy Clerk

GERARD A. CORSINI, Appellant, v U-Haul International, Inc., et al., Respondents.

Submitted June 2, 1997; decided October 21, 1997
Reported below, 234 AD2d 107.

Motion, insofar as it seeks leave to appeal from the Appellate Division order denying leave to appeal to the Court of Appeals, dismissed upon the ground that that order does not finally determine the action within the meaning of the Constitution; motion, insofar as it seeks leave to appeal from that portion of the December 12, 1996 Appellate Division order that vacated that portion of the April 4, 1996 interim order of Justice Kupferman that ordered certain Appellate Division Justices recused from participating in the appeal to that Court, dismissed upon the ground that that portion of that order does not finally determine the action within the meaning of the Constitution; motion for leave to appeal otherwise denied.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on March 18, 1997

Present - Hon. Richard W. Wallach, Justice Presiding
Eugene Nardelli
Israel Rubin
Milton L. Williams
Richard T. Andrias, Justices

----------x

Gerard A. Corsini,

Plaintiff-Appellant,

-against- M-388

U-Haul International, Inc., U-Haul Co. of New York, Inc. (formerly U-Haul Co. of Metro New York, Inc.), Ed Villavicencio (a/k/a Edward Villa) and Shelly Jackson, Index No. 26244/92

Defendants-Respondents.

----------x

The above-named plaintiff-appellant having moved for leave to appeal to the Court of Appeals from the decision and order of this unanimously affirmed an order of the Supreme Court, New York County, entered on or about December 4, 1995,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion be and the same hereby is denied.

ENTER:
Clerk

Memoranda, First Dept., December, 1996

15 GERARD A. CORSINI, Appellant, v U-Haul International, Inc., et al., Respondents. (651 NYS2d 29) - Order, Supreme Court, New York County (Lorraine Miller, J.) entered on or about December 4, 1995, which granted defendants' motion for summary judgment dismissing the complains (sub nom. *Corsini v. Amerco*, Sup Ct, NY County, Miller, J.), unanimously affirmed, with costs.

As the IAS Court observed, the instant action is in all pertinent respects identical to the prior action which was dismissed because of plaintiff's unprofessional conduct toward opposing counsel (212 AD2d 288, lv denied 87 NY 2d 964), the only difference being the addition of a defendant that is the parent company of another defendant, and thus in privity with that original party. The dismissal of the first action was in the nature of a default, and thus estops plaintiff from reasserting that claim in this or any other action (see, *Curiale v Ardra Ins. Co.*, 202 AD2d 252).

The pre-appeal application before a single Justice of this Court on April 4, 1996, was in part made returnable before this appeal Bench, such that the entire interim order issued thereon is now before us. Paragraph 3 of that order (Kupferman, J.), purporting to "recuse" sua sponte any Justice on the prior appeal from sitting on the instant appeal, is, after full argument before and consideration by this Bench, vacated. The balance of respondents' application for interim relief is deemed abandoned.

Concur - Wallach, J.P., Rubin, Nardelli, Williams and Andrias, JJ.

SUMMARY STATEMENT ON APPLICATION FOR EXPEDITED SERVICE AND/OR INTERIM RELIEF

(submitted by moving party)

Date: 4/4/96

Title of Matter	Gerard A. Corsini v. U-Haul International, Inc.

Appeal by Plaintiff from Order of Supreme Court entered on December 14, 1995.

Name of Judge: Miller - Notice of Appeal filed on January 26, 1996.

Nature of action or proceeding - This is an action to recover for personal injuries allegedly sustained in an assault.

Provisions of Order from Justice Miller's decision awarded D- Amerco summary judgment based upon this court's dismissal of this action in a prior appeal reported at 212 AD2d 388.

This application by respondent is for an Order striking this appeal in its entirety or an Order striking improper statements in Plaintiff's brief and adjourning this appeal to the September 1996 Term of this court.

If applying for a stay, state reason why requested - no stay being sought; just an adjournment of the appeal.

Has any undertaking been posted No.

Has application been made to court below for this relief No.

Has there been any prior application herein in this Court No. However, there was a prior appeal reported at 212 AD2d 388.

Has adversary been advised of this application. Yes.

Does he/she consent? Plaintiff does not consent.

Attorney for Movant	Attorney for Opposition
Brian J. Isaac, Gladstein & Isaac 10 Wall Street, N.Y.C. 10005 212 952-1111 233-8100	Gerard A. Corsini 433 W. 21st Street N.Y., N.Y. 10011
Appearing by Brian J. Isaac, Esq. Edwin Camacho, Esq. 245 5th Avenue New York, N.Y. 10016 686-2800	212 255-3232
Ronald Berman, Esq. 80 Maiden Lane New York, N.Y. 10038 212 422-1414	

DISPOSITION

1) Appeal is adjourned from June Term to September Term. 2) Inasmuch as it is the plaintiff's appeal, the caption should read as he designates. 3) The Justices in the first appeal 212 AD2d 288 should be recused on this motion and on the appeal. 4) The question of the content of appellant's brief on this appeal is referred to the September Appeals Bench and defendants will have to deal with plaintiff's (appellant's) brief as filed.

ELH
Law Assistant

GERARD A. CORSINI, Appellant, v U-Haul International, Inc. et al., Respondents.

Submitted November 27, 1995; decided February 20, 1996

Reported below, 212 AD2d 288.

Motion, insofar as it seeks leave to appeal from the Appellate Division order denying reargument or, in the alternative, leave to appeal to the Court of Appeals, dismissed upon the ground that that order does not finally determine the action within the meaning of the Constitution; motion for leave to appeal otherwise denied, with $100 costs and necessary reproduction disbursements.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on October 10, 1995

Present -Hon. Joseph P. Sullivan, Justice Presiding
Ernest H. Rosenberger
Betty Weinberg Ellerin
David Ross
Milton L. Williams, Justices

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Gerard A. Corsini,

Plaintiff-Respondent,

-against- M-4551

U-Haul International, Inc., U-Haul Co. of New York, Inc. (formerly U-Haul Co. of Metro New York, Inc.) and Shelly Jackson,

Defendants-Appellants.

-and-

Ed Villavicencio (a/k/a Edward Villa),

Defendant.

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Plaintiff-respondent having moved for reargument of, or, in the alternative for leave to appeal to the Court of Appeals from this Court's decision and order entered on July 20, 1995 (Appeal No. 54497),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon.

It is ordered that said motion be and the same is denied, in its entirety, with $100 costs.

ENTER:
Clerk

212 Appellate Division Reports, 2d Series 288
(630 NYS2d 45)

GERARD A. CORSINI, Respondent, v U-HAUL INTERNATIONAL, INC., et al., Appellants, et al., Defendant.

First Department, July 20, 1995

APPEARANCES OF COUNSEL

Gerard A. Corsini, New York City, respondent pro se.

Allen H. Issac of counsel, New York City (Brian J. Isaac with him on the brief; Gladstein & Isaac, attorneys), for appellants.

OPINION OF THE COURT

ROSENBERGER, J.

Plaintiff, an attorney, instituted this personal injury action, pro se, alleging that he was assaulted at a U-Haul rental office at 11th Avenue and 23rd Street, during an argument with the manager. This appeal concerns a determination of the appropriate sanction for plaintiff's misconduct during pretrial discovery.

According to one of the defendant's counsel, plaintiff commenced harassing him even before a pretrial deposition, by following defense counsel about the hallways of the

courthouse and into a courtroom, while he was on trial in an unrelated case. Plaintiff admits that he followed his adversary, but claims that he was merely attempting to evaluate his opponent in preparation for this trial.

On December 20, 1993, plaintiff appeared at the office of one of the defendant's counsel for a deposition. During this deposition, plaintiff repeatedly refused to answer, evaded, and gave improper responses to defendant's questions. Plaintiff also made personal attacks against defense counsel, his firm, and those associated with the defense. The following excerpts are illustrative:

"You practiced at the lowest level of the profession and, unfortunately, that is not even professional. Where that is, is in the sewer, in the basement. You're a hired gun, you're a paid person to do what the bidding of your client (sic), who has already been established to be unethical * * *

"You're so scummy and so slimy and such a perversion of ethics or decency because you're such a scared little man, you're so insecure and so frightened and the only way you can impress your client is by being nasty, mean-spirited and ugly little man, and that's what you are. That's the kind of prostitution you are in."

Plaintiff also frustrated the deposition by refusing to answer numerous relevant and appropriate questions about his domicile, witnesses to the events, and his medical treatment after the alleged assault, responding with comments such as "I'm not answering your question", "None of your business", or: "(j)ust assume I have been around and I have practiced with the best and the brightest which is irrelevant to anything about the way which is why you are not going to get an answer (to) any of those questions. * * * (They are) so poorly framed, so redundant and so irrelevant".

It is difficult to find one among the 217 pages of the deposition which does not contain willful evasion, gratuitous insult, argumentative response, or patent rudeness from the plaintiff.

At one point in the deposition, when counsel objected to plaintiff's mimicking his speech pattern in a manner suggesting an ethnic slur, plaintiff commenced a tirade that counsel, if he was Jewish, had a low image of himself and Jews. Defense counsel suspended the deposition after the following colloquy:

"Q: Didn't Ms. Jackson (a manager at the U-Haul office) give you the name and address of Mr. Leone at the Center?

"A: Did you hear me testify that she had?

"Q: Just answer my question.

"A: It was asked and answered.

"Q: Don't raise your voice.

"A: I didn't raise my voice. Oh, God, what a slime bag."

The defendants then brought the instant motion to dismiss the complaint pursuant to CPLR 3126, based upon plaintiff's obstructive behavior. At the hearing on defendants' motion, in open court, plaintiff turned his admonitions toward the Trial Judge, stating: "Don't roll your eyes. You didn't then. I'm saying don't do it, and the reason is I am going to establish to you that this man is a disgrace to the profession, and I called him exactly what he was."

Although the trial court found plaintiff's conduct at the deposition to be obstreperous and antagonistic, and that his answers were argumentative and nonresponsive, it declined to dismiss the complaint, warning plaintiff that proper decorum was thereafter required. The court ordered

that a Judicial Hearing Officer be appointed to supervise disclosure, directed plaintiff to reimburse defendants one half of the stenographic costs incurred at the deposition, and denied the balance of the motion. This appeal ensued.

Discovery abuse, here in the form of extreme incivility by an attorney with respect to an adversary, prior to and during a deposition, is not to be tolerated. Although the deposition was not held in a courtroom, and there was no Judge present, it was, nonetheless, part of a judicial proceeding in the Supreme Court. A lawyer's duty to refrain from uncivil and abusive behavior is not diminished because the site of the proceeding is a deposition room, or law office, rather than a courtroom. (*Matter of Schiff*, 190 AD2d 293 [1st Dept 1993]; *Paramount Communications v QVC Network*, 637 A2d 34 [Del 1994]; *Hall v Clifton Precision*, 150 FRD 525 [ED Pa 1993].)

CPLR 3126 provides various sanctions for such misconduct, the most drastic of which is dismissal of the offending party's pleading. Dismissal is appropriate when the movant conclusively establishes that the frustration of discovery was willful, contumacious, or due to bad faith (CPLR 3126 [3]; *Zletz v Wetanson*, 67 NY2d 711; *Sony Corp. v Savemart, Inc.*, 59 AD2d 676). Because of the strong public policy in this State against limiting audience before the court, and in favor of resolving disputes on the merits (see, *Ackerson v Stragmaglia*, 176 AD2d 602, 604), courts have reserved dismissal for rare cases where the extreme nature of the abuse warrants depriving a party of the opportunity to litigate the claim.

It is generally within the discretion of the trial court to determine an appropriate penalty (*Spira v Antoine*, 191 AD2d 219). Upon review of this record, however, we find that plaintiff's behavior, preceding and during a pretrial

deposition, was so lacking in professionalism and civility that dismissal is the only appropriate remedy (CPLR 3126 [3]; Zletz v Wetanson, supra).

Plaintiff's pro se status distinguishes this case from those in which we declined to dismiss a complaint on grounds that a party to an action should not be punished for the misconduct of its attorney (see, *Lowitt v Burton I. Korelitz, M.D., P.C.*, 152 AD2d 506, 507-508; *Bako v V. T. Trucking Co.*, 143 AD2d 561). Allowances are normally made for pro se litigants. Plaintiff, however, was an officer of the court, with a duty to comport himself accordingly. He is subject to the New York Code of Professional Responsibility.

Plaintiff claimed to be an experienced attorney and a member of the Bar of at least two other States. He claimed to have earlier practiced in one of New York's leading law firms. He said he had practiced with "the best and the brightest." Given plaintiff's background and experience, we find no excuse for his outrageous behavior, and hold that the sanction of dismissal is commensurate with the misconduct.

Accordingly, the order of the Supreme Court, New York County (Beverly S. Cohen, J.) entered on or about September 2, 1994, which denied defendants' motion to dismiss the complaint, should be reversed, on the law, the facts, and in the exercise of discretion, and the complaint dismissed, with costs. The Clerk is directed to enter judgment in favor defendants-appellants dismissing the complaint, with costs.

SULLIVAN, J. P., ELLERIN, ROSS and WILLIAMS, JJ., concur.

Order, Supreme Court, New York County, entered on or about September 2, 1994, which denied defendants' motion to dismiss the complaint, reversed, on the law, the facts and in the exercise of discretion, with costs, and the complaint dismissed.

COURT OF APPEALS
OF THE STATE OF NEW YORK

GERARD A. CORSINI,

Plaintiff-Movant-Appellant,

-against-

U-HAUL CO. OF NEW YORK, INC. (formerly U-HAUL CO. OF METRO NEW YORK, INC.), FOR LEAVE TO APPEAL

Defendant-Respondent,

U-HAUL INTERNATIONAL, INC., ED VILLAVICENICO (a/k/a EDWARD VILLA) and SHELLY JACKSON,

Defendants.

NOTICE OF MOTION OF PLAINTIFF-MOVANT FOR LEAVE TO APPEAL TO THE NEW YORK COURT OF APPEALS; - RETURN DATE MONDAY, MAY 31, 1999 OR TUESDAY, JUNE 1, 1999 IF SAID MONDAY IS A STATE HOLIDAY

V. THE QUESTIONS PRESENTED MERIT REVIEW

Review of the questions presented lies as a matter of statutory right, as the issues involve construction of the First and Fourteenth Amendments. Accordingly, the questions presented involve issues of the most fundamental public importance and also a conflict with existing state and federal

constitutional law in that the Orders as to which permission to appeal is sought flagrantly violate both the United States Constitution (See Marshall v. Jerrico, Inc., 100 S. Ct. 1610, 1613 (1980); Societe Internationale v. Rogers, 357 U.S. 197, 209 (1958); Hovey v. Elliot, 167 U.S. 409 (1897); Hammond Packing Co. v. State of Arkansas, 212 U.S. 322 (1908); Insurance Corp. of Ireland, Ltd. v. Compagnie Des Bauxites de Guinee, 456 U.S. 694, 705-709 (1982); Feingold v. Walworth Bros. Inc. et al., 235 N.Y. 446, 454-55, 144 N.E. 675, 677-78 (1924) and controlling state law. (See Hecht v. City of New York, 60 N.Y.2d, 57 (1983); and CPLR 5019(a).

The questions were all raised in the record below. (RA 67-78; and 93-115).

The First Department's Prior Order was issued even though plaintiff had never been given any prior notice of the possibility of the imposition of the drastic sanction of dismissal; there was no finding of any violation by plaintiff of any discovery order; no lesser sanction had been imposed first; and there was no finding of any prejudice to defendants' ability to defend (the Order having been issued even though at the time of oral argument plaintiff's deposition had been completed before a judicial hearing office with all questions answered by him in flagrant violation of plaintiff's Fourteenth Amendment Due Process right to a hearing on the merits of his claims and in punishment of plaintiff's exercise of his First Amendment rights, as was the First Department's extension of that Order to include UHNY by its January 12, 1999 Order.

There can be no question that the Prior Order's dismissal of plaintiff's claims (and the First Department's January 12, 1999 application of that Order to UHNY) on the grounds that plaintiff was allegedly uncivil or unprofessional to opposing counsel egregiously violates on the face of that decision plaintiff's substantive Due Process right to a hearing on the merits of those substantial personal injury claims. See

Insurance Corp. of Ireland v. Compagnie Des Bauxites de Guinee, 456 U.S. 694, 705-9, 102 S. Ct. 2099, 2105-2107 (1982); Societe International v. Rogers, 357 U.S. 197, 209, 78 S. Ct. 1087, 1094 (1958)("The provisions of Rule 37 [CPLR 3126's analog] which are here involved must be read in light of the provisions of the Fifth Amendment that no person shall be deprived of property without due process of law, and more particularly against the opinion of this court in Hovey v. Elliot, 167 U.S. 409...These decisions establish that there are constitutional limitations upon the power of courts, even in the aid of their own valid processes, to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause" (emphasis added); and Feingold v. Walworth Bros., Inc., 238 N.Y. 446, 454-5, 144 N.E. 675, 677 (1924, J. Pound)("The provisions of section 325, Civil Practice Act [CPLR 3126's predecessor], are elastic enough to enable the court to fit the punishment to the offense, and to restrict the maximum punishment to a 'proper case'...The line may be thus be definitely drawn between the proper punishment for suppressing evidence and the improper punishment as for contempt merely, so far as the [complaint is dismissed] as a punishment for contempt of court rather than a penalty for disobedience to (an) order, it comes within the condemnation of Hovey v. Elliot. The power to punish is limited by the presumption which attaches to the suppression of the evidence suppressed").

Nor can there can be any question that Judge Ross' outrageous, intemperate statements in open court of his extraordinary bias and animus and his fellow judges' continued deliberation with him egregiously violated in the most flagrant manner possible plaintiff's Due Process right to a fair and impartial tribunal as does the trial court's application of the unconstitutional Prior Order to UHNY. See Marshall v. Jerrico, Inc., 100 S. Ct. 1610, 1613 (1980):

> "(t)he Due Process Clause entitles a person to an impartial and disinterested tribunal in both

> civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision-making process...The neutrality requirement helps to guaranty that life, liberty, or property will not be taken on the basis of an erroneous or distorted concept of the facts or the law...At the same time, it preserves both the appearance and reality of fairness,'generating the feeling, so important to a popular government, that justice has been done'...by ensuring that no person will be deprived of this interest in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. The requirement of neutrality has been jealously guarded by this Court...[which has] stated that the Due Process Clause would not permit any procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof...which might lead him not to hold the balance nice, clear and true...'(J)ustice', indeed, 'must satisfy the appearance of justice, and justice, and this stringent rule may sometimes bar trial (even) by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties.'" (citations omitted).

For the same reasons, the Prior Order, based as it was on unconstitutional bias, denied plaintiff his right to

Equal Protection of the Laws under the Fourteenth.

Similarly, there is no question that the Prior Order, and the January 12, 1999 application thereof to UHNY, impermissibly punished and has chilled freedom of speech under the First Amendment and denied plaintiff Equal Protection of the Laws by sanctioning plaintiff (1) for criticizing opposing counsel, Mr. Isaac, based upon undisputed established serious misconduct relevant to the issues before the Court merely because he was a Jew and a majority of the appellate judges were Jewish and (2) for merely attending a public trial, including speaking with the clerk of the court, for the purpose of obtaining information in preparation of trial, as was plaintiff's First Amendment right. (RA 101-108).

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION--FIRST DEPARTMENT

GERARD A. CORSINI,

Plaintiff-Appellant,

-against-

U-HAUL CO. OF NEW YORK, INC. (formerly U-HAUL CO. OF METRO NEW YORK, INC.),

Defendant-Respondent,

-and-

U-HAUL INTERNATIONAL, INC., ED VILLAVICENICO (a/k/a EDWARD VILLA) and SHELLY JACKSON,

Defendants.

AFFIDAVIT OF PLAINTIFF-APPELLANT GERARD A. CORSINI IN SUPPORT OF MOTION TO RECUSE THE FIRST DEPARTMENT AND TRIAL COURT AND TO TRANSFER THIS APPEAL AND CASE TO THE SECOND DEPARTMENT

I, Gerard A. Corsini, being duly sworn, depose and say as follows:

1. I am the Plaintiff-Appellant in above-entitled action and make this affidavit of my personal knowledge in support of my motion to recuse the First Department and trial court and to transfer the pending appeal, this action and companion action, Index No. 36504/92, to the Second Department for determination of the appeal and for assignment of the case to a trial part for all purposes.

2. On September 16, 1997, even though no appeals were pending with respect to the matter, this Court, sua sponte, issued an Order recusing the entire Court and transferring to the Second Department for "trial" and all

other purposes a disciplinary matter involving decisions of this Court at issue in this appeal. A true and correct copy of the Court's unpublished Order is attached hereto as Exhibit "A".

2. Attached hereto as Exhibit "B" (Record on Appeal, pp. 93-115) is a true and correct copy of a verified complaint filed by me on February 11, 1997, against Judges Ross, Rosenberger, Ellerin, Sullivan, Williams, Wallach, Rubin, Nardelli, and Andrias of this Court alleging willful violations of my established constitutional rights under the First and Fourteenth Amendments of the United States Constitution. The allegations made in that complaint, which are incorporated herein by this reference, are true of my own personal knowledge, except those stated on information and belief, which I believe to be true.

3. The Second Circuit Court of Appeals upheld the dismissal of my federal complaint on the sole ground that the federal courts lack subject matter jurisdiction under the Rooker-Feldman doctrine to address the constitutional violations given the pendency of this state action where the constitutional issues must first be addressed before petition to the United States Supreme Court. Thus, the burden, in keeping with every state court judge's constitutional duty, to protect my constitutional rights rests in the state courts at this time and is, together with public policy of this state and applicable provisions relating to the judiciary, including without limitation Rule 25.21 of the Rules of the Chief Judge and Rule 100.3 of the Rules of the Chief Administrator, the basis for this motion.

4. The verified allegations in my federal complaint are the very same allegations the subject of this Court's September 16, 1997 sua sponte Order, as to which unequivocal precedents of the United States Supreme Court make indisputable that all of the defendant judges egregiously and willfully violated my established procedural Due Process right to fair and impartial tribunals, my established

substantive Due Process right to a hearing on the merits of my claims (dismissed notwithstanding those unequivocal precedents without any discussion of same and for the deliberate purpose of denying me a statutory right of appeal in further violation of my Fourteenth Amendment right to Equal Protection of the Laws, as was the discriminatory bases for the Court's decisions); as well as my First Amendment rights.

5. Particularly egregious was Judge Ross' outrageous hostile, highly emotional and intemperate outburst in open court that he identified with Respondent's counsel, Mr. Isaac, as a Jew and took personal offense at counsel's charge (proved in the record before the Court to have been despicably fabricated, which when I brought same to Judge Ross' attention, he said "I don't care") that I had mimicked Mr. Isaac's Jewish accent (which Mr. Isaac admitted he did not even have); the other defendant judges' continued deliberation with Judge Ross; Judge William's participation in a second appeal not only after having deliberated with Judge Ross but after having been recused, with all of the other judges on the first panel, by Judge Kupferman for clear unconstitutional bias; and the second panel's reversal of that recusal without comment of the outrageous conduct or the constitutional principles and decisions on which it was based, to cover-up the unconstitutional conduct of members of the court, which, in doing so, further violated my rights to a fair and impartial tribunal and resulted in the unconstitutional dismissal of my second action, contrary to all of the controlling decisional law of the state, never mentioned by the Court, and contrary to unequivocal decisions of the United States Supreme Court making clear that their conduct was flagrantly unconstitutional. Please see my federal complaint, my appellate brief addressing these issues and Marshall v. Jerrico, Inc., 100 S. Ct. 1610, 1613 (1980)...

6. The unconstitutional animus of the defendant judges and their deliberate disregard of all of the controlling

law of this state (going so far in the second appeal as to invent new law that not only conflicted with controlling law but made the constitutional infirmities all the greater) and of the United States Supreme Court, as to which oral argument was discouraged and no mention was made in any decision, make clear that I can not obtain a fair and impartial hearing in the First Department before the defendant judges. It is also apparent both from my conversations with Judge Murphy's clerk set forth in my federal complaint and from this Court's September 16, 1997 sua sponte recusal Order that the Court does not believe that any members of the Court are in a position to deliberate with respect to matters involving plaintiff and this action and still maintain the requisite appearance of fairness.

7. I am also convinced that Judge Miller has understood the full measure of the defendant judges' unconstitutional animus toward me, which they intended to communicate in their unconstitutional July 20, 1995 decision in this action, and given Judge Miller's recent discipline for serious misconduct coupled with her consistent utter disregard of, and failure to address any of the constitutional issues and authorities or controlling state law, I believe that she has been and is willing to do anything to please members of this Court, regardless of how unauthorized or violative of the United States Constitution, an has acted on that animus as reflected by her recent one sentence, ambiguous ruling permitting the dismissal of multi-million dollar claims against a defendant without oral argument and without any mention of the numerous state law and constitutional issues and facts much less the authorities which made clear that her decision was flagrantly unconstitutional and otherwise unsupported by law. In short, the First Department's unconstitutional animus and flagrant disregard of my constitutional rights has so tainted this action and these proceedings as to make it impossible for me to obtain a fair hearing in this case (or the companion case, Index No. 36504) in the First Department.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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GERARD A. CORSINI,

Plaintiff,

-against-

U-HAUL INTERNATIONAL, INC., U-HAUL CO. OF NEW YORK, INC. (formerly U-HAUL CO. OF METRO NEW YORK, INC.), ED VILLAVICENCIO (a/k/a EDWARD VILLA) and SHELLY JACKSON,

Defendants.

----------X

AFFIDAVIT OF PLAINTIFF IN OPPOSITION TO THE MOTION OF U-HAUL CO. OF NEW YORK, INC. TO AMEND JUDGMENT OR IN THE ALTERNATIVE, FOR SEPARATE JUDGMENT - PLAINTIFF REQUESTS ORAL ARGUMENT

GERARD A. CORSINI, being duly sworn, deposes and states under the penalties of perjury the truth of the following statements of his personal knowledge:

1. I am the plaintiff in the above action and submit this affidavit in opposition of the motion of defendant U-Haul Co. of New York, Inc. ("UHNY") (1) to amend the judgment which was entered by the Clerk of the above Court on April 20, 1998, pursuant to the Appellate Division's Order and Decision dated July 20, 1995, directing the Clerk "to enter judgment in favor of defendants-appellants dismissing the complaint..." (emphasis added) or, in the alternative, (2) to enter a separate judgment dismissing the complaint as to UHNY based upon the inapplicable doctrine of collateral estoppel improperly applied by this court

previously and rejected by the Appellate Division.

2. There can be no doubt that in dismissing Civil Action No. 36504/92 as to all defendants, including UHNY and defendant Villa (as opposed to defendants who were parties to the July 20, 1995 Order and AMERCO based upon an established parent-subsidiary relationship ("privity") with U-Haul International, Inc. ("UHI")), this court and the second panel of the First Department misread and misapplied the First....

Granting the Requested Relief
Would Constitute Flagrant Violations
Of Plaintiff's Constitutional Rights

20. The dismissal of UHNY would not only be contrary to controlling state law but also would be a flagrant violation by this court of my established constitutional rights under the Fourteenth Amendment (1) to a hearing on the merits of my claims and (2) to a fair and impartial tribunal given outrageous conduct of the appellate judges in rendering the July 20, 1995 Order denying any semblance of a fair and impartial tribunal (much less full and fair opportunity to be heard), both violating my constitutional rights and precluding application of the doctrines of res judicata and/or collateral estoppel to the July 20, 1995 Order even if those doctrines otherwise applied, which they do not, as made clear by longstanding and unequivocal precedents of the United States Supreme Court, which, needless to say, not only control but also require the plain meaning of the July 20, 1995 Order and controlling state law be given effect.

22. There can be no question that Judge Ross' outrageous, intemperate statements in open court of his extraordinary and repugnant semitic bias and animus (Exhibit "B", par. 21) and his fellow judges' continued deliberation with him and conduct in the first and second appeals egregiously violated in the most patent and flagrant manner

possible my Due Process right to a fair and impartial tribunal in both appeals. See Marshall v. Jerrico, Inc., 100 S. Ct. 1610, 1613 (1980)...

23. Nor can there be any question that the dismissal of my action on the grounds that I was allegedly uncivil or unprofessional to opposing counsel egregiously violated my distinct substantive Due Process right to a hearing on the merits of my substantial personal injury claims such that the July 20, 1995 Order was patently and flagrantly unconstitutional on its face (as would be any application or extension of it here).

24. Nor can there be any question that the July 20, 1995 Order impermissibly punished and has chilled freedom of speech under the First Amendment (as would any application or extension of that Order) by sanctioning me (1) for criticizing opposing counsel, Mr. Isaac, based upon undisputed established serious misconduct relevant to the issues before the Court merely because he was a Jew and a majority of the appellate judges were Jewish and (2) for merely attending a public trial, including speaking with the clerk of the court, for the purpose of obtaining information in preparation of my trial, as was my First Amendment right.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION--FIRST DEPARTMENT

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GERARD A. CORSINI,

Plaintiff-Appellant,

-against-

U-HAUL INTERNATIONAL, INC., et al.,

Defendants-Respondents.

----------X

AFFIDAVIT OF PLAINTIFF IN OPPOSITION TO MOTION OF THE CORPORATE DEFENDANTS TO STRIKE PORTIONS OF PLAINTIFF'S BRIEF, TO ADJOURN THE APPEAL AND FOR OTHER RELIEF

I, Gerard A. Corsini, being duly sworn, depose and state under oath as follows:

1. I am the Plaintiff-Appellant in this action/appeal and am fully familiar with the facts and circumstances of same.

2. The motion of the corporate defendants to strike portions of plaintiff's appellate brief and to adjourn this appeal is an attempt, as transparent as it is improper, not only to cause prejudicial delay to plaintiff but also to deny him his First and Fourteenth Amendment rights to argue in good faith, based upon the record, that this Court's July 20, 1995, Order was unconstitutional both in its effect and in its rendition.

4. Nothing could be more fundamental to a citizen's constitutional rights, including under the First and Fourteenth Amendments, than to argue in a court of law that those rights have been violated, particularly when the violation has been by the Court itself. Indeed, Mr. Brian Isaac's motive to suppress not only free speech, but free speech intended to protect plaintiff's constitutional rights, is obvious, as he has not offered (and can not) one reason why any statements in plaintiff's brief are false or otherwise unsupportable.

Judge Ross' Unconstitutional Bias

6. I will not burden the Court with the numerous misstatements and mischaracterizations by Mr. Brian Isaac in his motion papers, but merely point out, by way of poignant example, that Mr. Isaac glaringly omits any reference to Judge Ross' extraordinary comments and behavior during oral argument in the prior appeal which, among other things, form the basis of plaintiff's argument that the July 20, 1995, Order and Decision of this Court was constitutionally biased (not to mention an unquestionable deprivation of plaintiff's property rights as the United States Supreme Court cases cited in the instant appeal make absolutely clear--brief, p. 15 et. seq.).

8. Mr. Brian Isaac improperly omitted plaintiff's support for his constitutionally protected argument that this Court's July 20, 1995, Order was rendered in violation of these clear constitutional guarantees, cited at pp. 7-8 of plaintiff's brief, and restated here, namely that Judge Ross, the first jurist to address plaintiff during oral argument, started out by stating to plaintiff in an angry, emotional, hostile and confrontational tone of voice, which took plaintiff totally aback, that Judge Ross was particularly interested in defendants' counsel's charge that plaintiff had mimicked counsel's "accent", because he, Judge Ross, also had an "accent, it being clear, as Judge Rosenberger's decision indicates, that Mr. Isaac senior had (falsely) accused plaintiff of mimicking his "Jewish" accent and that Judge Ross meant to convey by his comments that he too was Jewish and took personal offense and was unable to deliberate impartially based upon Mr. Isaac's accusation (even though the undisputed evidence established that Mr. Isaac had despicably fabricated that accusation to affect persons like Judge Ross).

10. The July 20, 1995, Decision of this Court was further defective because the Court would not permit plaintiff to make any meaningful argument concerning Mr. Isaac the elder's serious misconduct even though plaintiff's objections to that conduct (which involved the exercise of his First and

Fourteenth Amendment rights) formed the basis in material part for the Court's decision and even though the undisputed evidence in the record established both Mr. Isaac's unethical conduct and the merit of plaintiff's objections to same for which he was so severely sanctioned by the dismissal of his multi-million dollar claims.

11. In short, what Mr. Isaac improperly seeks by this motion is to prevent plaintiff from exercising his constitutional rights to argue the serious earlier violations of his rights by this Court, including Judge Rosenberger's Decision's unconstitutional deprivation of plaintiff's property based upon plaintiff's exercise of his First Amendment rights to attend a public trial and to receive information involving arguments made and proceedings held in a public courtroom: without any specific findings of any specific conduct of plaintiff, Justice Rosenberger rested the Court's decision to dismiss plaintiff's complaint, not on any statute an contrary to controlling decisional law, but on a vague "finding" of "incivility" and "unprofessionalism" by plaintiff at a public trial in which Mr. Isaac the elder participated. Not only did plaintiff have a constitutional right to be present and receive information at the trial (Cf. Valley Broadcasting v. U.S. District Court, 798 F.2d 1289, 1292 (9th Cir. 1989); Kremer v. Bureau of Police, 958 F. 2d 1242, 1252-1269 (3rd Cir. 1992) (citing numerous Supreme Court cases confirming the established principle that the First Amendment protects the right to receive information and ideas and the 'public access to discussion, debate, and the dissemination of information and ideas', quoting First National Bank of Boston v. Bellotti, among other Supreme Court cases)), the severe punishment of dismissal based upon that vague "finding" would be unconstitutional even if it did not involve plaintiff's attendance at a trial for the purpose of listening to public debate and to receive information concerning that trial, See United States v. Wunsch, 54 F.3d 579 (9th Cir. 1995) (holding that discipline of an attorney for "offensive personality" was unconstitutional, citing Cohen v. California,

403 U.S. 15, 25, 91 S. Ct. 1780, 1788, which overturned a conviction of a defendant for misconduct in a courthouse, on the grounds that the defendant did not have adequate notice of what was prohibited). Here, of course, the Judge at Mr. Isaac's trial, according to Mr. Isaac's belated statements in the record, did not find any constitutional ground for excluding plaintiff from that trial. However, long after that trial, Judge Rosenberger was "able" to deprive plaintiff of his multi-million dollar claims based on a vague and unspecified "finding" of "incivility" (no less unconstitutionally vague than "offensive personality") not only without any notice to plaintiff, but without any relevance to any statute and contrary to controlling decisional law.

12. Plaintiff respectfully submits that granting Mr. Isaac's motion would involve a determination by this Court that this Court is not the appropriate forum for the assertion or protection of plaintiff's constitutional rights, including to an impartial hearing, that such rights are irrelevant to the application of the July 20, 1995 Decision and Order and that plaintiff should be enjoined from making arguments concerning his constitutional rights and their violation, including Judge Rosenberger's reference to Mr. Isaac's (fabricated) accusation of an ethnic slur even though irrelevant to any issue in the case, his serious distortion of plaintiff's position with respect thereto, his failure to even mention that plaintiff was objecting to Mr. Isaac's unethical behavior, much less that that misconduct was conclusively established in the record, his failure to even mention that plaintiff had been assaulted with a shotgun and had suffered post-traumatic disorder, his deliberating with a Judge who had made clear that he could not impartially judge the appeal because of his personal and emotional identification as a Jew with Mr. Isaac the elder as a Jew who had (falsely) accused plaintiff of making an ethnic slur, among other things, evidences an ethnic bias of Judge Rosenberger.

PLAINTIFF-MOVANT'S MOTION FOR PERMISSION TO APPEAL TO THE COURT OF APPEALS

PLEASE TAKE NOTICE that Plaintiff-Movant Gerard A. Corsini (hereinafter "Corsini" or "Plaintiff"), by his undersigned counsel, will move the Court of Appeals, Court of Appeals Hall, Albany, New York, on Monday, November 27, 1995, the return date.

III. STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

1. Did the imposition by the Appellate Division, First Department, pursuant to CPLR § 3126(3), of the drastic sanction of dismissal of Plaintiff's multi-million dollar complaint, based solely upon a finding of lack of professionalism and civility, constitute the improper imposition of punishment, unrelated or lacking a sufficient nexus to (a) any means of compelling disclosure or any failure to provide disclosure, (b) any permissible presumption concerning the merits of Plaintiff's claims or (c) any actual prejudice to Appellants' ability to defend, so as to constitute a violation of Plaintiff's due process rights under the Fourteenth Amendment to a hearing on the merits of his claims as recognized by the United States Supreme Court and acknowledged by this Court? Societe Internationale v. Rogers, 357 U.S. 197, 209 (1958); Hovey v. Elliott, 167 U.S. 409 (1897); Hammond Packing Co. v. State of Arkansas, 212 U.S. 322 (1908); Insurance Corp. of Ireland, Ltd. v. Compagnie Des Bauxites de Guinee, 456 U.S. 694, 705-709 (1982); Feingold v. Walworth Bros. Inc. et al., 238 N.Y. 446, 454-55, 144 N.E. 675, 677-78 (1924).

2. Did the Appellate Division, First Department, violate Plaintiff's constitutional rights or otherwise commit reversible error as a matter of law in imposing the most extreme sanction of dismissal without first affording Plaintiff,

by means of a conditional order or similar notice, the opportunity to avoid that drastic sanction, as contemplated by the drafters of CPLR § 3126 and established precedent?

3. Did the Appellate Division, First Department, violate Plaintiff's constitutional rights or otherwise commit reversible error as a matter of law in imposing the most extreme sanction of dismissal when a lesser sanction had already cured any discovery problem?

Supreme Court, U.S.
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99-624

No.

In The

Supreme Court of the United States

October Term, 1999

GERARD A. CORSINI,

Petitioner,

v.

U-HAUL INTERNATIONAL, INC., *et al.*,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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PARTIES TO THE PROCEEDING

Parties to the proceeding include Gerard Corsini, Petitioner, U-Haul International Inc., formerly U-Haul Co. of Metro New York, U-Haul Co. of New York, Inc., Amerco Inc. and Shirley Jackson.

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STATEMENT OF THE CASE

This is a petition by the Petitioner, Gerard A. Corsini ("Mr. Corsini"), an attorney who allegedly practiced with the "best and the brightest", who seeks to overturn three separate orders of the Appellate Division, First Department which resulted in the dismissal of his case.

In his first appeal (*Corsini v. U-Haul International*, 212 AD2d 288 [1st Dept. 1995], *lv. den.* 87 NY2d 964 [1996]), the First Department, in a landmark decision, held that the trial court abused its discretion in failing to dismiss Mr. Corsini's complaint, based upon his incivil and outrageous conduct before, during and after a deposition wherein he attacked defendant's trial counsel, Allen H. Isaac, Esq., mercilessly, viciously, unethically and improperly.

In the second appeal (*Corsini v. U-Haul International*, 234 AD2d 107 [1st Dept. 1996], *lv. den.* 90 NY2d 978 [1997]), the Appellate Division held that defendant Amerco, the parent of one of the U-Haul defendants, could not be sued by plaintiff based upon the dismissal of the complaint in the first appeal, stating: "The dismissal of the first action was in the nature of a default, and thus estops plaintiff from reasserting that claim in this or any other action."

In the third appeal (*Corsini v. U-Haul Co. of N.Y.*, 257 AD2d 441 [1st Dept. 1999], *lv. den.* 93 NY2d 812 [1999]), the First Department held that the trial court's granting of the motion to amend the judgment was proper, because the trial court "correctly noted that this Court's directed dismissal of the action as against defendant-respondent on a prior appeal" holding that the defendant U-

Haul Co. of New York Inc. was an intended beneficiary of the dismissal of the complaint in the first cause of action.[1]

As detailed below, it is respectfully submitted that the Appellate Division's decisions on the three appeals were indisputably correct, were not violative of Mr. Corsini's constitutional rights, and sprang from his own outrageous behavior, which is like nothing seen heretofore in a member of the New York Bar.

A. Mr. Corsini's outrageous actions, which resulted in the dismissal of his case.

Mr. Corsini represented himself in an action brought against U-Haul International Inc., U-Haul Co. of New York Inc., formerly U-Haul Co. of Metro New York Inc. (collectively, the "U-Haul defendants"), and Shelly Jackson, as well as Edward Villavicencio. He testified that he "practiced with the best and the brightest" and was "admitted in three states" and worked with the "second largest law firm in America" (344).[2] Yet the actions he engaged in can only be described as unbelievable.

First, he stalked Mr. Isaac, counsel for the U-Haul defendants, while Mr. Isaac was trying a case called *Heller v. Century Maxim* (11, 68), ostensibly in order to determine when the case was completed so that Mr. Corsini could schedule his deposition. The *Heller* case was ultimately

---

[1] The first appeal will be known as Corsini I; the second as Corsini II; the third as Corsini III.

[2] Numbers in parentheses refer to pages of the record on appeal in the case under consideration.

completed, and Mr. Corsini appeared for a deposition on December 20, 1993 (74-292). It is safe to say that no member of this Court has ever seen or heard of a deposition such as this one.

Mr. Corsini's objectionable remarks and the instances of his reprehensible conduct are literally countless. The briefs and record are presumably before the Court. His answers were designed to thwart discovery and impair the entire litigation process. He stated *on the record* that Mr. Isaac was "unethical and dishonest" and a "hired gun" of his client (118), and that the U-Haul defendants "promised to find some little weasel like you and that's exactly what they have done." He described Mr. Isaac as "despicable" and stated that he practiced "at the lowest level of the profession"; he stated that Mr. Isaac was "in the sewer" and in the "basement" and was a "paid person to do the bidding of your client" (118). He accused U-Haul's president of being involved in a murder (119), then began "screaming at the top of his lungs" (119). He stated that Mr. Isaac "lied" and made "false representations." He also called Mr. Isaac a "slimeball" who was "blighting the legal profession", and said that "the shoe fits perfectly", meaning that U-Haul was a dishonest company (119, 127-28). He called Mr. Isaac "sleazy, slimy" and "despicable" (145-46), and also insulted him based upon his Jewish heritage, although he then attempted to deny having done so (128-29); he called Mr. Isaac "incompetent" and "obnoxious" (165). In response to a question regarding his case, he called Mr. Isaac a "jerk" and then spelled the word for the record (177). He stated that he was "ashamed as an attorney to practice in the same bar that you practice at" (195). He refused to answer Mr. Isaac's questions and then explained: "You do not know how to ask a question properly, but when you do it in a malicious

purpose to ask it in a tone that you use, the manner you use and the gesture you use, that is what I object to." He accused Mr. Isaac and co-counsel of conspiring to obstruct justice, and of hiding witness (230-45).

All this took place during a deposition where Mr. Isaac was simply seeking answers to questions about the alleged assault upon Mr. Corsini.

When Mr. Corsini's abusive conduct could no longer be tolerated, Mr. Isaac suspended the deposition and told Mr. Corsini to leave the office (289-90).

In a hearing before the Supreme Court, New York County on March 17, 1994, Mr. Corsini continued his insults (33-44); he had two altercations with Justice Beverly S. Cohen, once interrupting her during a colloquy with Mr. Isaac (25-29), and later loudly commanding her not to "roll her eyes" (44).

A full and senior panel of the Appellate Division, First Department read the briefs and heard oral argument. In a landmark decision in Corsini I, Justice Ernst Rosenberger held that Mr. Corsini's conduct was so outrageous that the only appropriate sanction was dismissal of his complaint. After quoting some of Mr. Corsini's statements, Justice Rosenberger observed: "It is difficult to find one among the 217 pages of deposition which does not contain wilful evasion, gratuitous insult, argumentative response or patent rudeness from the plaintiff", and that Mr. Corsini continued his atrocious conduct in front of the trial judge, who had to endure his diatribes. Justice Rosenberger stated:

> **Discovery abuse, here in the form of extreme incivility by an attorney with respect to an adversary, prior to and during a deposition, is not to be tolerated. Although the deposition was not held in a courtroom, and there was no judge present, it was, nonetheless, part of a judicial proceeding in the Supreme Court. A lawyer's duty to refrain from uncivil and abusive behavior is not diminished because the site of the proceeding is a deposition room or law office rather than a courtroom.**

Plaintiff's pro se status could not save him, since he was "an experienced attorney and member of the Bar in at least two other states" who claimed to have practiced "in one of New York's leading law firms" and who stated that he worked with the "best and the brightest." Accordingly, "Given the plaintiff's background and experience, we find no excuse for his outrageous behavior, and hold that the sanction of dismissal is commensurate with the misconduct."

B. Corsini II.

Mr. Corsini had also brought an action against Amerco Inc. Counsel for the U-Haul defendants and, at the time, Shelly Jackson (Ms. Jackson and Mr. Villavicencio are now represented by separate counsel), moved to dismiss this claim on the basis of the basis of the dismissal of the complaint in Corsini I, arguing that collateral estoppel and *res judicata* prevented the maintenance of the suit. The trial court agreed and dismissed the complaint. The First Department affirmed, stating:

"The dismissal of the first action was in the nature of a default, and thus estops plaintiff from reasserting that claim in this or any other action."

C. Corsini III.

In the third appeal, U-Haul Co. of New York, Inc., listed as an appellant and represented by the law firm of Gladstein & Isaac, had not been directly named as a party defendant in the original notice of appeal filed by the U-Haul defendants, solely through a typographical error. It was clear to the Appellate Division and to all the parties that Gladstein & Isaac was representing all the U-Haul defendants. However, the clerk refused to enter a judgment for U-Haul Co. of New York Inc., and a motion was made to include that defendant as a party entitled to the benefit of the dismissal in Corsini I. The trial court granted the motion, and the Appellate Division affirmed, finding that all the U-Haul defendants were covered by the decision in Corsini I, and that the failure to name one of the U-Haul defendants specifically in a portion of the notice of appeal was not fatal. See, *Miller v. DeBuono*, 90 NY2d 783,794 [1997]; *Cover v. Cohen*, 61 NY2d 261, 277-8 [1984]; *Citnalta v. Caristo Assoc. Electric Co.*, 244 AD2d 252-4 [1st Dept. 1997]; *Ohearn v. Ohearn*, 55 AD2d 7-8 [3d Dept. 1976].

D. Mr. Corsini's conduct during and after the appeals.

Mr. Corsini brought a federal civil rights complaint against the First Department, accusing it of bias, and continued with his outrageous attacks against the justices of the Appellate Division, blaming them for disciplinary proceedings instituted against him based on statements he

made on the record (Petition, pp. 15-24). He continues this conduct in his most recent writings.

REASONS FOR DENYING THE WRIT

Although Mr. Corsini raises constitutional issues, asserting that the dismissal of his case violated his due process rights (See, *Insurance Corp. of Ireland v. Copagnie Des Bauxites de Guinee*, 456 US 694 [1982]; *Societe Internationale v. Rogers*, 357 US 197 [1958]; *Hovey v. Elliot*, 167 US 409 [1897]), in that his case was dismissed "without affording a party an opportunity for a hearing on the merits of his case" (Writ, pp. 21-22), this record does not support that claim. Mr. Corsini's case was dismissed because of his own outrageous conduct. He was given three hearings, and all resulted in a resounding defeat. His intemperate behavior, his unethical conduct, and his blatant attempt to thwart discovery by engaging in abusive and harassing tactics, led to the dismissal of his case.

The fact that Mr. Corsini was an attorney licensed to practice law, who boasted of his excellence, actually hurt his cause. Such an individual can be presumed to know the importance of discovery and of proper demeanor. Mr. Corsini's conduct at his deposition, the hearing before the trial court, and at the *Heller* trial cannot be blamed on excessive zeal or a temporary loss of control. It was clearly a method he used to thwart discovery by refusing to answer questions and attempting to confuse and intimidate those who questioned him about his case.

We submit that a review of the three appeals and the records demolishes any claim by Mr. Corsini that the decisions of the trial court, Appellate Division and Court of

Appeals deprived him of his due process rights. At least in New York, there has never been a case of an attorney acting as Mr. Corsini has acted. His outrageous conduct, repeated at length, required the dismissal of his case. The punishment was commensurate with the offense. The decisions of the appellate courts were correct. This Court should deny the writ and not afford Mr. Corsini any further review of his claims, which have already been thoroughly aired and properly rejected.

CONCLUSION

For the reasons given above, and for those given in the briefs and records in Corsini I-III, the petition should be denied.

Dated: **New York, New York**
November 11, 1999

Respectfully submitted,

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No. 99-624

In The

Supreme Court of the United States

October Term, 1999

GERARD A. CORSINI,

Petitioner,

v.

U-HAUL INTERNATIONAL, INC., et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE APPELLATE DIVISION, OF THE SUPREME COURT,
FIRST JUDICIAL DEPARTMENT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Introduction

Petitioner has attempted to transmogrify before this Court what is a very mainstream case of dismissal predicated upon petitioner's egregious conduct during the discovery process into a case resonating from the core to the farthest penumbral reaches of our Constitution. This, it is submitted, he cannot do.

In addition to that set forth herein, Respondent Shelly Jackson joins in the brief of respondent U-Haul in opposition to petitioner's petition for a writ of certiorari in all aspects and regards.

Argument

THE PETITION SHOULD BE DENIED AS TO THE QUESTION OF A COURT'S INHERENT POWER TO DISMISS AS A SANCTION FOR CONDUCT WHICH ABUSES THE JUDICIAL PROCESS IS WELL SETTLED

Notwithstanding the petitioner's attempt to impart a Constitutional luster to his claims, it is well-settled that as an exercise of a court's inherent power, it may dismiss an action

for conduct which abuses the judicial process (Chambers v. Nasco, 501 US 32, 44-45 [1991]; Link v. Wabash Railroad Company, 370 US 626 [1962]), including abuses which occur in relation to a party's discovery obligations (National Hockey League v. Metropolitan Hockey Club, Inc., 427 US 639 [1976]; Roadway Express, Inc. v. Piper, 447 US 752, 763 [1980]; see also, Federal Rule of Civil Procedure 37 [b]).

Here, petitioner was found to have abused the discovery process "in the form of extreme incivility by an attorney with respect to an adversary, prior to and during a deposition" (24a[1]) He attempts, by alleging bias and misconduct on part of New York Appellate Justices *de hors* the record, to overlay a Constitutionally foul schemata upon their otherwise mainstream decisions. It is respectfully submitted that bald allegations should not suffice and, inasmuch as petitioner must be confined to the record upon which he seeks certiorari, no issue worthy of this Court's attention is presented.

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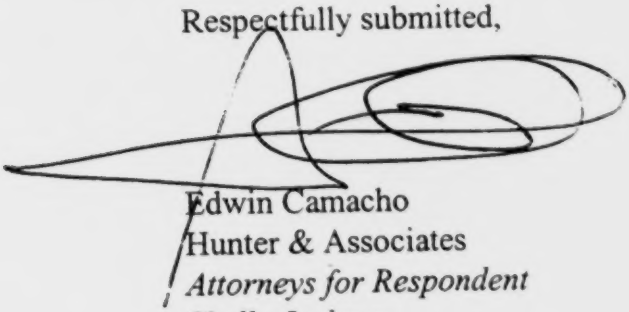
[1]Numbers followed by "a" refer to corresponding pages of the instant Petition For Writ of Certiorari.

Conclusion

The Petitioner presents no noteworthy issue which certiorari should be granted. Petitioner's application for a writ of certiorari should be denied.

Dated: New York, New York
November 12, 1999

Respectfully submitted,



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No. 99-624

In The

Supreme Court of the United States

GERARD A. CORSINI,

Petitioner,

- against -

U-HAUL INTERNATIONAL, INC., *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The Appellate Division, New York Supreme Court, First Judicial Department

REPLY BRIEF IN SUPPORT OF PETITION

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REPLY BRIEF IN SUPPORT OF PETITION

Petitioner respectfully submits this reply brief in support of his petition for a writ of certiorari.

I.

THE STATE COURT'S VIOLATIONS OF PETITIONER'S SUBSTANTIVE DUE PROCESS RIGHT TO A HEARING ON THE MERITS OF HIS CLAIMS ARE INDISPUTABLE

Respondent Jackson conspicuously fails to address *Societe International v. Rogers*, 357 U.S. 197, 209 (1958), *Hovey v. Elliott*, 167 U.S. 409 (1897) or the related cases cited in the Petition and instead misplaces reliance on *Chambers v. Nasco*, 501 U.S. 32 (1991) and *Link v. Wabash R. Co.*, 370 U.S. 626 (1992), for the general proposition that a court has inherent authority to dismiss "for abuses of the judicial process" and on *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639 (1976), and *Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1980) for the general proposition that a court has authority under Federal Rule 37(b) to dismiss a party's claims for discovery abuses.[1]

Here, the dismissals in question were expressly made for "discovery abuse . . . in the form of extreme incivility by an attorney with respect to an adversary" pursuant to CPLR Section 3126, Federal Rule 37's state counterpart,

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[1] The U-Haul respondents' untenable position that petitioner had in fact been afforded a hearing on the merits speaks for itself. Respondent Amerco, Inc. filed no opposition brief.

not upon any purported inherent authority of the court.[2] More important, in *Hammond Packing Co. v. Arkansas*, 212 U.S. 322, 349-351 (1909), this Court, pointing out that the lower court in *Hovey v. Elliott* had unconstitutionally stricken defendant's answer pursuant to "what it assumed to be its inherent authority", made clear that the constitutional infirmities did not depend upon the source of the power, whether inherent or rule based, but upon the constitutional safeguards themselves, which the Court described as follows:

> "The fundamental guaranty of due process is absolute, and not merely relative. The inherent want of power of a court to do what was done in Hovey v. Elliott was in that case deduced from no especial infirmity of the judicial power to reach the result, but upon the broad conception that such power could not be called into play by any department of the government without transgressing the constitutional safeguard as to due process, at all times dominant and controlling where the Constitution is applicable . . . Hovey v. Elliott involved a denial of all right to defend as a mere punishment . . . [whereas the] proceeding here taken may therefore find its sanction in the undoubted right of the lawmaking power to create a presumption of fact as to the bad faith and untruth of an answer to be gotten from the suppression or failure to produce the proof ordered, when such proof concerned the rightful decision of the cause. In a sense, of course, the striking out of the answer and default was a punishment, but it was only remotely so, as the generating source of the

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[2] Petition, 24a.

power was the right to create a presumption flowing from the failure to produce. The difference between mere punishment, as illustrated in Hovey v. Elliott, and the power exerted in this, is as follows: In the former, due process of law was denied by the refusal to hear. In this, the preservation of due process was secured by the presumption that the refusal to produce evidence material to the administration of due process was but an admission of the want of merit in the asserted defense. The want of power in the one case and its existence in the other are essential to due process, to preserve in the one and to apply and enforce in the other." At 349-351.

This Court further explained in *Insurance Corp. v. Compagnie Des Bauxites*, 456 U.S. 694, 707-708 (1982), that

"Rule 37(b)(2) contains two standards – one general and one specific – that limit a district court's discretion. First, any sanction must be 'just'; second, the sanction must be specifically related to the particular 'claim' which was at issue in the order to provide discovery. While the latter requirement reflects the rule of *Hammond Packing, supra*, the former represents the general due process restrictions on the court's discretion.

In holding that the sanction in this case was 'just', we rely specifically on the following. First, the initial discovery request was made in July, 1977. Despite repeated orders from the court to provide the requested material, on December 21, 1978, the District Court was able to state that the petitioners 'haven't even made any effort to get this information up to this point.' . . . The Court then warned petitioners of a possible sanction.

> Confronted with continued delay and an obvious disregard of its orders, the trial court's invoking of its powers under Rule 37 was clearly appropriate. Second, petitioners repeatedly agreed to comply with the discovery orders within specified time periods. In each instance, petitioners failed to comply with their agreements . . . Fourth, petitioners had ample warning that a continued failure to comply with the discovery orders would lead to the imposition of this sanction. Furthermore, the proposed sanction made it clear that, even if there was not compliance with the discovery order, this sanction would not be applied if petitioners were to 'produce statistics' . . . Petitioners failed to comply with the discovery order; they also failed to attempt to meet this burden of proof. This behavior coupled with the ample warnings, demonstrates the "justice" of the trial court's order."

The facts of this case stand in stark contrast. Here, unlike *Insurance Corp. v. Compagnie Des Bauxites, National Hockey League v. Metropolitan Hockey Club, Inc.* and *Roadway Express, Inc. v. Piper, supra,* there was no violation of any court order, much less a discovery order; no warning of the imposition of any sanctions, much less the imposition of the drastic sanction of dismissal for rudeness having nothing whatever to do with "proof concern[ing] the rightful decision of the cause" (*Hammond Packing Co., supra* at 351), including rudeness completely outside any proceeding in the dismissed actions; and no "specific" relationship between the sanction imposed and petitioner's claims, particularly as there had been no prejudice to respondents' ability to defend and petitioner had

fully answered all deposition questions before a hearing officer long before the first dismissal order.[3]

Thus, the dismissal orders at bar clearly failed to satisfy the dual due process restrictions enunciated by the Court in *Insurance Corp. v. Compagnie Des Bauxites, supra,* that the orders be both "just" and "specifically" tailored to a claim at issue in a discovery order. The dismissal orders were therefore even more egregiously violative of petitioner's "essential" due process rights than the unconstitutional order in *Hovey v. Elliott* striking a party's defenses for failure to comply with a court order to pay monies into court.

In *Degen v. United States,* 517 U.S. 820, 827-829 (1996), the Court, although not basing its decision on constitutional grounds, referenced its holding in *Hovey v. Elliott* that disentitlement was unconstitutional as mere punishment for contempt of court, in reversing the striking of a party's civil claims based upon his failure to appear in a related criminal prosecution, stating that a "court's inherent power is limited by the necessity giving rise to its exercise" and that

> " . . . the sanction of disentitlement is most severe and so could disserve the dignitary purposes for which it is involved. The dignity of a court derives from the respect accorded its judgments. That respect is eroded, not enhanced, by too free a recourse to rules foreclosing consideration of the merits." At 827-829.

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[3] Petition, p. 5.

Here, of course, there was absolutely no interest of the state court in upholding the dignity of any judgments or orders and no such interest was asserted, as no orders of any kind, much less discovery orders, were at issue.

Moreover, even if this case did not, as it clearly does, fall squarely within the constitutional prohibitions of *Hovey v. Elliott* and *Hammond Packing Co., supra,* regardless of the purported authority for the dismissals in question, *Chambers v. Nasco* and *Link v. Wabash R. Co., supra,* could provide no support to respondents.

Link merely acknowledged the long-standing inherent authority of a court to dismiss *sua sponte* for a lack of prosecution (circumstances which clearly give rise to a permissible presumption of a cause's lack of merit), holding that Federal Rule 41, which authorized the same relief on the motion of a party, did not preclude the exercise of that inherent authority.

Chambers v. Nasco, supra, did not involve the dismissal of an action depriving the sanctioned party of a hearing on the merits of his claims or defenses, as here and in *Hovey v. Elliott,* but rather the question whether the court had inherent authority to award attorneys' fees as a sanction against a party "whose entire course of conduct throughout the lawsuit evidenced bad faith and an attempt to perpetrate a fraud on the court" after numerous warnings from the court. 501 U.S. at 37-38 and 50-51. Similarly, *Roadway Express, Inc. v. Piper, supra,* involved the willful violation of a discovery order and numerous failures to provide discovery and attend hearings justifying the district court's inherent authority to assess attorneys' fees, the Court expressly noting that

"[t]he due process concerns posed by an outright dismissal are plainly greater than those presented by assessing counsel fees against lawyers". 447 U.S. at footnote 14.

II.

RESPONDENTS DO NOT DISPUTE THE EXTRAORDINARY AND PERVASIVE BIAS OF THE FIRST DEPARTMENT IN ALL THREE APPEALS OR THE VIOLATIONS OF PETITIONER'S FIRST AMENDMENT RIGHTS

The U-Haul respondents do not dispute any of the extraordinary bias of Justices Ross, Rosenberger or the First Department in all three appeals set forth in the Petition[4] and record or the fact that it flagrantly violated petitioner's procedural due process right to fair and impartial tribunals. Respondent Jackson likewise fails to dispute that bias or its unconstitutionality but seeks to "wish it away" by disingenuously suggesting that it is outside a record replete with undisputed evidence thereof. *See, e.g.*, Petition, 5a; 27a-30a (with references to the record below); 34a, 37a-38a and 40a.

Similarly, the U-Haul respondents do not dispute that the record establishes as a matter of law that their counsel had fabricated an accusation that petitioner had made an ethnic slur against him[5] or that their counsel's outrageous accusation that petitioner had "stalked" him in a public courthouse involved nothing more than petitioner's attendance at a public trial to listen, observe and obtain

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[4] Petition, pp. 5-20.

[5] Petition, p. 4.

information.[6] Instead, the U-Haul respondents merely repeat the disproved accusations with reference to the lower court record to mask their inability to dispute the record.[7]

Nor do respondents address the serious misconduct of their counsel established as a matter of law in the record[8] which was the subject of all of petitioner's deposition statements in issue or the state court's extraordinarily biased and distorted opinion whose findings were unsupported as a matter of law.[9]

Instead, taking petitioner's deposition statements completely out of the context of their counsel's misconduct and intentional provocations established in the record as a matter of law,[10] the U-Haul respondents seek to make petitioner so unlikeable that this Court, like the state court, will surrender the fundamental constitutional guarantees established by its unequivocal precedents and

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[6] Petition, pp. 7-9.

[7] Respondents also repeat their counsel's false non-evidentiary accusation made at petitioner's deposition that petitioner "began 'screaming at the top of his lungs' " even though it had been established by undisputed evidence in the record to have been false. *See* Petition, footnote 6.

[8] Petition, pp. 9-10, in particular footnote 6.

[9] *See, e.g.*, Petition, pp. 7-12. Not only is respondents' assertion that petitioner's "answers were designed to thwart discovery and impair the entire litigation process" unsupported by the record, it was established in the record that petitioner had answered virtually every relevant question concerning the matters the subject of the complaint and answers at his initial deposition.

[10] Petition, pp. 9-10, in particular footnote 6.

mandated by the most basic notions of fairness and due process. The very notion that a plaintiff with established claims for having been assaulted with a shotgun by respondents could have his claims dismissed for rudeness to respondents' counsel involving his objections to established misconduct of counsel and his attendance at a public trial unrelated to his claims without the violation of any court order, any prejudice to respondents or any presumption concerning the merits of his claims is shocking enough. That the First Department would express repugnant ethnic bias in open court in favor of respondents' counsel and then base its decision on rudeness to him, later reverse Justice Kupferman's recusal order and dismiss a second action notwithstanding the constitutional precedents of this Court and conflicting controlling state and decisional law precluding same, thereafter prejudice petitioner's disciplinary proceeding commenced by the court but later refuse to follow the *sua sponte* recusal order entered in connection therewith and then further rule against petitioner in amending the dismissal judgment to include a non-appealing party contrary to both controlling law and the express language of the controlling opinion after expressing further bias is so prejudicial to the administration of justice and so disrespectful of this Court as to defy description.

Respectfully submitted,

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